

# Rulemaking

May 2023 Business Meeting

**01** Rule Suspensions Memo

---

**04** Rulemaking Update Memo

---

**08** 2022-2023 Rulemaking  
Cycle Timeline

---

**09** 2023-2024 Rulemaking  
Cycle Timeline

---

**10** 18A\_Rules Readoption  
Fiscal Analysis

---

**97** "Data Collection and  
Harassment Prevention for  
the Conservation of Marine  
and Estuarine Resources"  
Fiscal Analysis

---

**117** "Oyster Sanctuary Rule  
Changes" Fiscal Analysis

---

**131** "Conforming Rule Changes  
for Shellfish Relay Program  
and Shellfish Leases and  
Franchises" Fiscal Analysis

---



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

May 5<sup>th</sup>, 2023

## 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

North Carolina Marine Fisheries Commission Rules 15A NCAC 03R .0110 and 15A NCAC 03L .0201 were amended to revise boundary descriptions for crab spawning sanctuaries and update requirements for the blue crab fishery in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. Proclamations [M-12-2022](#) and [M-1-2021](#) have been rescinded and the temporary rule suspensions for the above mentioned rules are no longer in effect.

The Division recently developed a Shellfish Relocation Permit that will allow the relocation of shellfish for protection purposes in an area closed to harvest that would otherwise be destroyed due to maintenance dredging, construction, or other development activity. The requirement to relocate shellfish will come as a condition in the Division of Coastal Management (DCM) permit for a development activity. The receiving sites for the relocated shellfish would be designated by the Fisheries Resource Specialist involved with the DCM permit and all designated receiving sites would also be in areas closed to harvest. Proclamation [SF-5-2023](#) establishes the Shellfish Relocation Permit.

Rule 15A NCAC 03O .0501 establishes procedures and requirements for individuals to obtain permits issued by the Division of Marine Fisheries. This rule includes specific criteria for permittees to obtain permits such as license requirements. The establishment of this permit causes a potential issue as the permittees for DCM permits likely would not have any commercial fishing or shellfish licenses to allow the collection and transport of polluted shellfish under the Shellfish Relocation Permit. As a result, the division determined the need to suspend 03O .0501 (e)(4) so that Shellfish Relocation Permit holders can relocate oysters without a commercial fishing and/or shellfish license. Proclamation [M-11-2023](#) suspends the portion of the rule to allow the Shellfish Relocation Permit to be fully utilized and requests an indefinite suspension.

## **Action Needed**

**\*\*Vote to suspend subsection (4) of section (e) of NCMFC Rule 15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS 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. They include:

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

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

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

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

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

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

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

Continued suspension a portion of this rule for an indefinite period. Suspension of this rule allows the division to implement year-round small mesh gill net attendance requirements in certain areas of the Tar-Pamlico and Neuse rivers systems. This action was taken as part of a department initiative to review existing small mesh gill net rules to limit yardage and address attendance requirements in certain areas of the state. This suspension continues in Proclamation [M-3-2023](#).

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

Continued suspension of portions of this rule for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the

Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019 and continues in [SH-1-2022](#).

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

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

**NCMFC Rule 15A NCAC 03M .0519 (a) and (b) Shad & 03Q .0107 (4) Special Regulations: Joint Waters**

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



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

April 28, 2023

## MEMORANDUM

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

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

**SUBJECT:** Rulemaking Update

---

### Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A. Request the MFC vote on approval of Notice of Text for Rulemaking to begin the process for 103 rules in the 2023-2024 rulemaking cycle.

### Findings

- Periodic Review and Readoption of Rules – Requirements
  - North Carolina G.S. § 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption. For 15A NCAC 03 (Marine Fisheries), the MFC completed the rule readoption process.
  - For 15A NCAC 18A (Sanitation), the MFC has 79 rules remaining for readoption. On Jan. 16, 2020, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2024, for these rules.
  - The MFC must readopt the remaining rules by this deadline or the rules will expire and be removed from the N.C. Administrative Code.
- At its May meeting, the MFC is scheduled to receive an update about three ongoing packages of proposed rules and vote to begin rulemaking for a fourth package of rules.

### Action Needed

The MFC is scheduled to vote on approval of Notice of Text for Rulemaking to begin the process for 103 rules, covering four subjects.

### Recommendation

The Division of Marine Fisheries (DMF) recommends the MFC vote on approval to begin the rulemaking process for 103 rules. For more information, please refer to the rulemaking section of the briefing materials.

### 2021-2022 Annual Rulemaking Cycle Update (69 rules)

The MFC had 69 proposed rules from "Package B" and "Package C" that were automatically subject to legislative review during the 2023 long session. These rules covered the following subjects:

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

All 69 rules became effective March 15, 2023, which was the 31<sup>st</sup> legislative day of the 2023 long session. A news release and rulebook supplement were distributed. The rule packages are complete.

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

At its August 2022 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process to amend 15A NCAC 03M .0101 (Mutilated Finfish) and readopt 15A NCAC 18A .0911 (Marinas, Docking Facilities, and Other Mooring Areas). A table showing the steps in the process is provided in the briefing materials. The MFC gave final approval of the rules at its February 2023 business meeting. The rules are anticipated to be reviewed at the May 18, 2023, Rules Review Commission meeting for final approval. The mutilated finfish rule is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and would not be reviewed until the 2024 short session. The earliest effective date of the marinas, docking facilities, and other mooring areas rule is June 1, 2023.

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

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

At its May 2023 business meeting, the MFC is scheduled to vote on approval of Notice of Text for Rulemaking to begin the process for 103 rules. A summary of the proposed rules by subject is provided below. Please refer to the documents for the 2023-2024 rulemaking cycle in the rulemaking section of the briefing materials, including a table showing the timing of the steps in the process and the fiscal analysis of each subject. The proposed rules are appended to each respective fiscal analysis. Proposed rules would have an earliest effective date of April 1, 2024, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would likely be available for review during the 2024 short session.

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

Pursuant to N.C.G.S. § 150B-21.3A, this package of 85 rules in 15A NCAC 03K and 18A is proposed for the readoption of 56 rules with amendments, repeal through readoption of 23 rules, adoption of three rules, and the repeal of one rule. Proposed changes would help ensure that North Carolina remains in full compliance with national requirements, provide efficiencies for the DMF in the process of implementing and enforcing the rules, and clarify and update the rules for stakeholders. North Carolina is part of the National Shellfish Sanitation Program (NSSP), which is a

federal/state cooperative program designed to "promote and improve the sanitation of shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce" as stated in Section I, page 2 of the NSSP Guide for the Control of Molluscan Shellfish (Guide). DMF staff work together with representatives from other states, the federal government, and industry through the Interstate Shellfish Sanitation Conference to develop guidelines for all state shellfish programs that are summarized in the Guide.

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

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

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

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

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

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

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

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

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

### Background Information

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

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

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

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Readopted	116 Rules Readopted	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	42 Rules Readopted	1 Rule Readopted	Rule Readoption (79)	6/30/24 deadline

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



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

May 2023

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

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

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

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

May 2023

Time of Year	Action
February-April 2023	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 26, 2023	MFC votes on approval of Notice of Text for Rulemaking
Aug. 1, 2023	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 1-Oct. 2, 2023	Public comment period held
Aug. 16, 2023	Public hearing held via WebEx with listening station
Nov. 17, 2023	MFC receives public comments and votes on final approval of permanent rules
Jan. 18, 2024	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2024	Proposed effective date of rules not subject to legislative review
April 1, 2024	Rulebook supplement available online
2024 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

## **Fiscal Impact Analysis of Proposed Readoption of 15A NCAC 18A Rule Package**

**Rule Amendments:** 15A NCAC 03K .0110, 18A .0301, .0302, .0305, .0401-.0424, .0426-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806 (readoption, repeal through readoption, amendment, adoption, and repeal)

**Name of Commission:** N.C. Marine Fisheries Commission

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

**Impact Summary:** State government: Minimal  
Local government: No  
Federal government: No  
Substantial impact: No

### **AUTHORITY**

<u>N.C. General Statutes</u>	
N.C.G.S. § 113-134.	Rules.
N.C.G.S. § 113-182.	Regulation of fishing and fisheries.
N.C.G.S. § 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
N.C.G.S. § 113-221.4.	Embargo.
N.C.G.S. § 143B-289.52.	Marine Fisheries Commission – powers and duties.

**Necessity:** General Statute 150B-21.3A requires State agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. This package of 85 rules in 15A NCAC 03 and 18A (see Appendix I), is proposed for the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule pursuant to this requirement. Proposed changes would help ensure that North Carolina remains in full compliance with national requirements, allow the Division of Marine Fisheries (DMF) to increase clarity of rules for stakeholders, and allow the DMF to efficiently support and enforce rules.

### **I. Background**

The 85 rules in this package all relate to standards for commercial shellfish sanitation and processing procedures. Session Law 2011-145 abolished the Division of Environmental Health and transferred the Shellfish Sanitation and Recreational Water Quality sections to the DMF under a Type I transfer. As a result, N.C.G.S. § 130A-230 was repealed and the authority for

rulemaking for the sanitation requirements for harvesting, processing, and handling of scallops, shellfish, and crustaceans was transferred to the Marine Fisheries Commission (MFC), which is now contained in N.C.G.S. § 113-221.2.

The purpose of the MFC is to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in N.C.G.S. § 113-132, including commercial and recreational fisheries resources (Chapter 143B, Article 7, Part 5D). For the protection of public health, the MFC is also required to adopt rules establishing sanitation requirements for the harvesting, processing, and handling of scallops, shellfish, and crustacea of in-state origin. The rules of the MFC may also regulate scallops, shellfish, and crustacea shipped into North Carolina (N.C.G.S. § 113-221.2). Additionally, the MFC has authority to define conduct as a crime in the N.C. Administrative Code (Chapter 113 of the N.C. General Statutes) and does so for the most egregious infractions that threaten the public health. The associated rules in this package are described in this analysis.

North Carolina is part of the National Shellfish Sanitation Program (NSSP), which is a federal/state cooperative program designed to “promote and improve the sanitation of shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce” as stated in Section I, page 2 of the NSSP Guide for the Control of Molluscan Shellfish ([Guide](#)). DMF employees work together with representatives from other states, the federal government, and industry through the Interstate Shellfish Sanitation Conference to develop guidelines for all state shellfish programs that are summarized in the Guide. North Carolina must meet the minimum standards included in the Guide for N.C. shellfish to be able to be sold through interstate commerce and protect N.C. shellfish consumers within and outside of the State.

## **II. Proposed Rule Changes**

The MFC is proposing 85 rules for either readoption with no changes, readoption with amendments, repeal through readoption, amendment, adoption, or repeal. These 85 rules are rules that introduce unlawful language into rule, are proposed to be newly adopted rules, codify existing practices in rules, incorporate material by reference, add requirements from other rules, are rules proposed to be repealed, are proposed to be readopted with minor language changes, or are proposed to be readopted without any changes. Adopting the below described rule readoptions, repeals through readoption, amendments, adoptions, or repeals would help ensure that North Carolina remains in full compliance with national requirements included in the Guide and would bring organization and clarity to the shellfish sanitation rules in 15A NCAC 18A.

### **i. Rules that add “unlawful” language to rule:**

There are three rules proposed for readoption that propose the addition of "unlawful" language for failing to meet certain requirements for 1) vessels and vehicles used for the commercial harvest and transport of shellfish (15A NCAC 18A .0419), 2) temperature controls of shellfish during harvest (15A NCAC 18A .0420), and 3) temperature controls for storage of shellfish (15A NCAC 18A .0427).

For the first two of these rules, the "unlawful" requirements are currently being implemented and enforced through proclamation authority delegated to the Fisheries Director in 15A NCAC 03K

.0110 for issuance of proclamations for the protection of public health. Similarly, the requirement to not allow dogs or other animals in or on vessels or vehicles engaged in the commercial harvest and transport of shellfish is currently being implemented and enforced via proclamation. Initially, these requirements were implemented via proclamation to address variable conditions, consistent with N.C.G.S. § 113-221.1 and 15A NCAC 03H .0103. Proclamations are available and maintained through the DMF website and announced through an opt-in list serve. Additionally, N.C.G.S. § 113-221.1 states that stakeholders are under a duty to keep themselves informed of current proclamations; the agency's stakeholders are familiar with the proclamation process. Now that the conditions are no longer variable, associated "unlawful" requirements and the requirement about animals are proposed to be added to the rules for clarity.

The "unlawful" language is proposed to be added to these two rules for emphasis and clarity. Failure to meet the shellfish sanitation requirements is considered to pose an imminent threat to public health. The added clarifying language could result in incremental improvements in compliance which would enhance the protection of public health related to the consumption of shellfish. In turn, this could help to bolster consumer confidence in N.C. shellfish. As compared to the regulatory baseline, the proposed changes will not require any procedural changes and should not result in any additional costs.

For the third rule, the requirements for temperature controls for storage of shellfish are already set forth in the rule. Proposed changes add associated "unlawful" requirements, which establishes more protection of public health related to the consumption of shellfish and helps to bolster consumer confidence in N.C. shellfish. Proposed changes to the third rule also clarify that the rule may be superseded by proclamation issued under the authority of 15A NCAC 03K .0110 or further specified in the Hazard Analysis Critical Control Point (HACCP) plan (15A NCAC 18A .0434). Adding the "unlawful" requirements to this rule may produce small costs to stakeholders who are caught violating a rule. Increasing consumer confidence in N.C. shellfish through rule is expected to outweigh any small costs infractions could bring to stakeholders.

**ii. Rules proposed for adoption:**

The three rules proposed for adoption are consistent with requirements of the Guide and are currently enforced by other MFC rules and compliance with the Guide. Placing the requirements in discrete permanent rules would help to ensure clarity amongst stakeholders and DMF employees. The proposed rule 15A NCAC 18A .0437 is bringing into rule already enforced requirements for a relatively new product of in-shell shellfish. In-shell shellfish is a product that is already shucked and then returned to the half shell. This product is a relatively novel and popular approach to selling shellfish. Currently in-shell product is subject to all other shellfish sanitation rules, but this proposed rule provides clarity to stakeholders that are participating in providing in-shell product to the market. The proposed rule 15A NCAC 18A .0438 provides clarity for when a shellfish dealer is found out of compliance. Currently shellfish dealers can be penalized for not being in compliance through the recertification of their permit. Explaining the steps and requirements in rule for dealers to get into compliance allows for clarity for stakeholders.

Further, the proposed rule provides a clear time schedule that ensures stakeholders have complete timeline information when they are working towards meeting compliance in the case of items that do not pose an immediate threat to consumers. This timeline is currently enforced through the Guide and is being brought into rule for stakeholder clarity. The proposed rule 15A NCAC 18A .0439 brings clear recall procedures into rule and references the FDA Enforcement Policy on Recalls CFR Title 21, Chapter 1, Subchapter A., Part 7-Enforcement Policy. Providing the reference in rule allows for stakeholders to best understand recall procedures and requirements.

The proposed changes to rules 15A NCAC 18A .0437, 15A NCAC 18A .0438, and 15A NCAC 18A .0439 will not require any procedural changes and are not expected to have quantifiable economic impact on stakeholders nor the state of North Carolina. The proposed rules could result in incremental improvements in compliance with shellfish sanitation requirements which would enhance the protection of public health related to the consumption of shellfish. In turn, this could help to bolster consumer confidence in N.C. shellfish.

### **iii. Rules that codify existing practices:**

There is a group of 21 rules proposed for readoption that codify existing practices in rule, consistent with the Guide, enabling North Carolina to remain compliant and continue participating in interstate commerce of shellfish. The proposed changes are not expected to have quantifiable economic impact on stakeholders nor the state of North Carolina because the practices are already occurring and being enforced in accordance with proclamation or the Guide. Due to the improved clarity of the requirements, unquantifiable incremental benefits are possible in terms of enhanced protection of public health and increased consumer confidence in the safety of North Carolina shellfish.

- 15A NCAC 18A .0301 provides updated definitions for sections .0300 through .0800.
- 15A NCAC 18A .0405 explicitly states that if a facility is flooded the shellfish plant shall discontinue operation and clarifies that all contaminated shellfish product shall be destroyed, bringing practice, required by the Guide, into rule for clarity amongst stakeholders.
- 15A NCAC 18A .0406 clarifies language about flooring requirements and ensures stakeholders are aware that floors cannot allow for leakage where shellfish is stored.
- 15A NCAC 18A .0407 clarifies language about the cleanliness of wall and ceiling materials.
- 15A NCAC 18A .0408 specifies the minimum lighting requirements in shellfish plants. The minimum lighting level is 25 foot-candles in packing and shucking rooms and 10 foot-candles throughout the rest of the shellfish plant. These changes help to bring clarity to the rule, which is otherwise vague on minimum lighting requirements. The current requirements, set out by the Guide, state that a “dealer shall provide lighting throughout the facility that is sufficient...” The agency reviewed the requirement and determined the above-described minimums are sufficient and are readily met by current stakeholders. The minimum requirements are not expected to result in increases needed for lighting in existing shellfish plants but allows for clarity for existing and future stakeholders.

- 15A NCAC 18A .0409 provides more details about the hazards that the ventilation requirements are intended to prevent from occurring.
- 15A NCAC 18A .0415 clarifies that the rule applies to the shellfish plant and the area around the plant.
- 15A NCAC 18A .0416 reorganizes and clarifies hygiene requirements for employees while working in the shellfish plant.
- 15A NCAC 18A .0418 clarifies the requirements for where chemicals shall be stored in a shellfish plant.
- 15A NCAC 18A .0422 clarifies the requirements for water that can be used to clean shellstock and points to two other rules where related requirements are set, to ensure regulated stakeholders are informed.
- 15A NCAC 18A .0424 clarifies who can receive shellfish and how that shellfish can be received. More detail is provided in this rule but is not in addition to current practices enforced by the DMF in accordance with the Guide.
- 15A NCAC 18A .0426 clarifies under which circumstances bulk shipments between shellfish dealers are permitted.
- 15A NCAC 18A .0429 points to the rule where requirements are for determining if shellfish is adulterated (15A NCAC 18A .0438). Proposed changes also clarify that the authority of marine fisheries inspectors to seize shellfish under separate statutory authority (N.C.G.S. § 113-137) shall not be affected by requirements for embargo in the rule. The practice of voluntary disposal of adulterated shellfish is also accounted for, which is the most common outcome for adulterated shellfish, consistent with the Guide.
- 15A NCAC 18A .0432 provides clarity on requirements for consumer advisory warnings on public-facing products.
- 15A NCAC 18A .0504 clarifies that reshippers can only buy from shellfish dealers. This requirement is already in place but can only be determined indirectly through a combination of rules with defined terms and applicability rules.
- 15A NCAC 18A .0612 provides clarification that equipment used in the handling of ice shall only be used to handle ice.
- 15A NCAC 18A .0614 clarifies requirements for labeling of shellfish containers. Proposed changes are not in excess of requirements of the Guide and consolidate requirements in one rule for stakeholders.
- 15A NCAC 18A .0615 provides clarification for shellfish cooling requirements. The amendments reflect a change for the temperature for shucked shellfish and in-shell product of 40° F or below to 45° F or below, consistent with a change in the Guide. Proposed changes are not in excess of requirements of the Guide and consolidate requirements in one rule for stakeholders.
- 15A NCAC 18A .0618 provides clarification that the heat shock process shall be listed and posted in a viewable location.
- 15A NCAC 18A .0619 clarifies requirements for labeling and repacking of shellfish. Proposed changes are not in excess of requirements of the Guide and consolidate requirements in one rule for stakeholders.

- 15A NCAC 18A .0620 provides clarification for the amount of time that thawed shellfish can exceed 45° F. Proposed changes are not in excess of requirements of the Guide and consolidate requirements in one rule for stakeholders.

**iv. Rules that incorporate material by reference:**

There are changes to 12 rules proposed for readoption that bring clarity to the rule by incorporating material in the rule by reference, pursuant to N.C.G.S. § 150B-21.6. The proposed changes are not expected to have quantifiable economic impact on stakeholders nor the state of North Carolina.

Proposed rule changes in 15A NCAC 18A .0301 include a definition for the state shellfish control "authority" from the National Shellfish Sanitation Program (NSSP), "easily cleanable" from the 2017 U.S. Food Code, and "sanitize" from 21 CFR 110.3.

Rules in 15A NCAC 18A .0400 apply to shellfish dealers, depuration facilities, shellstock plants, shucking and packing plants, repacking plants, reshippers, permittees with facilities approved for wet storage, and all other businesses and persons that buy, sell, transport, or ship shellfish. The proposed changes are as follows:

- 15A NCAC 18A .0402 organize and clarify general requirements for operation. Standards for food contact surface equipment are incorporated by reference from the Guide.
- 15A NCAC 18A .0403 organize and clarify supervision and training requirements. Principles of food hygiene and food safety are incorporated by reference from the Code of Federal Regulations.
- 15A NCAC 18A .0413 organize and clarify requirements for the water supply. Standards for the water supply and standards for certification of a laboratory other than the State Laboratory of Public Health for testing a water supply from a private source are incorporated by reference from the N.C. Administrative Code.
- 15A NCAC 18A .0414 organize and clarify requirements for toilet facilities. Standards for disposal of toilet wastes and other sewage are incorporated by reference from the N.C. Administrative Code.
- 15A NCAC 18A .0428 clarify requirements for sampling and testing of shellfish. Standards for poisonous or deleterious substances are incorporated by reference from the Guide.
- 15A NCAC 18A .0430 organize and clarify requirements for bacteriological and contamination standards for shellfish. Standards for contaminants that render shellfish unsafe for human consumption are incorporated by reference from the Guide.
- 15A NCAC 18A .0433 clarify requirements for conducting a hazard analysis to determine food safety hazards. The definition of "reasonably likely to occur" is incorporated by reference from the Code of Federal Regulations.
- 15A NCAC 18A .0434 organize and clarify requirements for a Hazard Analysis Critical Control Point (HACCP) plan. The definition of "reasonably likely to occur" is incorporated by reference from the Code of Federal Regulations. Proposed changes also



incorporate by reference standards for taking corrective action from the Code of Federal Regulations.

The proposed rule changes in 15A NCAC 18A .0610 clarify requirements for equipment sanitation for shucking and packing plants and repacking plants. Standards for sanitizing solutions are incorporated by reference from the Code of Federal Regulations.

The proposed rule changes in 15A NCAC 18A .0701 organize and clarify requirements for operation of depuration facilities; there are no active depuration facilities in North Carolina. Standards for depuration are incorporated by reference from the Guide. Requirements are also added from another rule proposed for repeal (15A NCAC 18A .0704; see next section for description.)

The proposed rule changes in 15A NCAC 18A .0801 organize and clarify requirements for facilities approved for wet storage; there are no active facilities approved for wet storage in North Carolina. Standards for wet storage are incorporated by reference from the Guide.

v. **Rules that move requirements from other rules:** (see also "Repealed rules")

Requirements from six rules are proposed to be moved to eight other rules proposed for re-adoption (one previously discussed) and one rule proposed for adoption (previously discussed) for efficiency and clarity. Aggregating related requirements in fewer rules allows stakeholders to access the requirements more easily and makes the requirements clearer. The proposed changes are not expected to have quantifiable economic impact on stakeholders nor the state of North Carolina.

- 15A NCAC 18A .0410 is proposed to be renamed as "Pest Control", retaining current requirements for the control of flies, and adding requirements from 15A NCAC 18A .0411 for rodents and animals, which is proposed for repeal. A definition of "pests" is proposed to be added to 15A NCAC 18A .0301 (previously discussed).
- 15A NCAC 18A .0434 (HACCP Plan) and 15A NCAC 18A .0435 (Sanitation Monitoring Requirements) are each proposed to add requirements from 15A NCAC 18A .0436 (Monitoring Records), which is proposed for repeal.
- 15A NCAC 18A .0502 (Grading Shellstock and Commingling) is proposed to add requirements for graders from 15A NCAC 18A .0503 (Grader), which is proposed for repeal.
- 15A NCAC 18A .0412 (Plumbing) applies broadly to shellfish dealers, depuration facilities, shellstock plants, shucking and packing plants, repacking plants, reshippers, permittees with facilities approved for wet storage, and all other businesses and persons that buy, sell, transport, or ship shellfish. Amendments are proposed to add requirements for hand washing from 15A NCAC 18A .0604 (Handwashing Facilities), which only applies to shucking and packing plants and repacking plants. As a result, 15A NCAC 18A .0412 is proposed to be renamed as "Plumbing and Hand Washing Facilities" and 15A NCAC 18A .0604 is proposed for repeal. Another rule, 15A NCAC 18A .0416 (Personal Hygiene) currently sets requirements for hand washing and hand washing facilities in the context of an employee's personal hygiene and is also broadly applicable to all shellfish

dealers. These are not new requirements, and it is appropriate for the hand washing requirements to be included in the "Plumbing" and "Personal Hygiene" rules.

- 15A NCAC 18A .0420 (Transporting Shellfish) and 15A NCAC 18A .0421 (Records) are each proposed to add requirements from 15A NCAC 18A .0617 (Shipping), which is proposed for repeal.
- 15A NCAC 18A .0439 (Recall Procedure) is proposed for adoption (previously discussed) to set requirements for conducting recalls of adulterated or misbranded shellfish that applies broadly to shellfish dealers, depuration facilities, shellstock plants, shucking and packing plants, repacking plants, reshippers, permittees with facilities approved for wet storage, and all other businesses and persons that buy, sell, transport, or ship shellfish. This makes moot 15A NCAC 18A .0621 (Recall Procedure), which only applies to shucking and packing plants and repacking plants; this rule is proposed for repeal.

**vi. Rules proposed for repeal:** (see also "Rules that move requirements from other rules")

There are 23 rules proposed for repeal through readoption and one rule that was previously readopted that is proposed for repeal (15A NCAC 18A .0704). Most of these rules pertain to depuration facilities (12 rules) and wet storage of shellstock (five rules), neither of which are actively occurring nor anticipated to occur in North Carolina. Should this change, amendments to remaining rules (15A NCAC 18A .0701 and .0801) incorporate by reference requirements in the Guide for these practices. Requirements from six rules are proposed to be added to other rules for efficiency and clarity (15A NCAC 18A .0411, .0436, .0503, .0604, .0617, .0621). The remaining rule (15A NCAC 18A .0305) is duplicative of another MFC rule (15A NCAC 03P .0102). No economic impacts are expected from the proposed repeals of these rules.

**vii. Rules that only contain minor language changes:**

There is a group of 15 rules proposed for readoption that make small changes to rules to bring clarity and modern language into rule or to make conforming changes across the package of rules. The affected rules are: 15A NCAC 03K .0110, 18A .0302, .0401, .0404, .0417, .0501, .0601, .0602, .0603, .0605, .0606, .0607, .0608, .0609, .0611, .0613, and .0616. The proposed changes are not expected to have quantifiable economic impact on stakeholders nor the state of North Carolina.

**viii. Rules proposed for readoption without changes:**

The proposed rule 15A NCAC 18A .0423, is proposed for readoption without changes and is not expected to have any economic impact on stakeholders nor the state of North Carolina.

### **III. Economic Impact Summary**

The overarching effect of these proposed rule amendments is to conform rule language with current state proclamations and national requirements so as to remain compliant and continue participating in interstate commerce of shellfish. As compared to the regulatory baseline, the

proposed amendments will not require any procedural changes and should not result in any additional costs to the state. Adding the "unlawful" requirements to the rule for temperature controls for storage of shellfish (15A NCAC 18A .0427) may produce small costs to stakeholders who are caught violating the rule. No other costs to the regulated community are expected. The proposed amendments will help to clarify the shellfish sanitation requirements for the regulated community. The improved clarity could provide a small benefit to DMF in the form of reduced time spent providing technical assistance. The added clarifying language could result in unquantifiable, incremental improvements in compliance with shellfish sanitation requirements which would enhance the protection of public health related to the consumption of shellfish. In turn, this could help to bolster consumer confidence in N.C. shellfish.

1 15A NCAC 03K .0110 is proposed for amendment as follows:

2

3 **15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND**  
 4 **MUSSELS**

5 (a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance  
 6 (Model Ordinance) includes requirements for the sale or distribution of shellfish from approved areas or ~~shellstock~~  
 7 shellfish dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or  
 8 ~~mislabeled-misbranded~~ during cultivation, harvesting, processing, storage, or transport. To protect public health, the  
 9 Fisheries Director may, by proclamation, impose requirements of the Model Ordinance as set forth in Paragraph (b)  
 10 of this Rule on any of the following:

11 (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport ~~of~~ of:

12 (A) oysters;

13 (B) clams;

14 (C) scallops; ~~or~~ and

15 (D) mussels;

16 (2) areas used to store shellfish;

17 (3) means and methods to take shellfish;

18 (4) vessels used to take shellfish; ~~or~~ and

19 (5) shellstock conveyances as defined in 15A NCAC 18A .0301.

20 (b) Proclamations issued under this Rule may impose any of the following requirements:

21 (1) specify time and temperature controls;

22 (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301,  
 23 or cross-contamination or adulteration of shellfish;

24 (3) specify sanitation control procedures set forth in 21 ~~Code of Federal Regulations (CFR) Part~~ CFR  
 25 123.11;

26 (4) specify Hazard Analysis Critical Control Point (HACCP) requirements set forth in 21 ~~CFR~~  
 27 Part:CFR:

28 (A) 123.3 Definitions;

29 (B) 123.6 HACCP Plan;

30 (C) 123.7 Corrective Actions;

31 (D) 123.8 Verification;

32 (E) 123.9 Records; and

33 (F) 123.28 Source Controls;

34 (5) specify tagging and labeling requirements;

35 (6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters  
 36 and certified shellfish dealers;

1 (7) require sales records and collection and submission of information to provide a mechanism for  
2 tracing shellfish product back to the water body of origin; and

3 (8) require product recall and specify recall procedures.

4 21 CFR 123.3, 123.6-9, 123.11, and 123.28 are ~~hereby~~ incorporated by reference, including subsequent amendments  
5 and editions. A copy of the reference ~~materials—material~~ can be found at ~~[http://www.ecfr.gov/cgi-bin/text-  
7 idx?SID=f4edd666e75f54ccda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-<br/>6 idx?SID=f4edd666e75f54ccda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl)~~, free of charge.  
8 <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123?toc=1>, at no cost.

9 (c) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of  
10 the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102  
11 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the  
12 Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

13 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52;*

14 *Eff. April 1, 2014;*

15 *Amended Eff. May 1, 2017;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*  
17 *2018-2018;*

18 *Amended Eff. April 1, 2024.*

1 15A NCAC 18A .0301 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0300 – SANITATION OF SHELLFISH - GENERAL**

4  
5 **15A NCAC 18A .0301 DEFINITIONS**

6 The following definitions shall apply throughout Sections .0300 ~~to .0900~~ through .0800 of this Subchapter:

- 7 (1) "Adulterated" ~~means the following:~~ means:
- 8 (a) ~~Any any~~ shellfish that have been harvested from ~~prohibited areas;~~ polluted areas as defined  
9 in 15A NCAC 03L.0101;
- 10 (b) ~~Any any~~ shellfish that have been shucked, packed, or otherwise processed in a plant ~~which~~  
11 that has not been permitted by the Division of Marine Fisheries in accordance with these  
12 Rules or by another state shellfish control "authority" as defined in the National Shellfish  
13 Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section I: Purposes  
14 and Definitions, in accordance with these Rules; This definition is incorporated by reference,  
15 including subsequent amendments and editions. A copy of the reference material can be  
16 found at [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)  
17 program-nssp, at no cost;
- 18 (c) any shellfish that may have been contaminated by flood waters in accordance with Rule .0405  
19 of this Subchapter;
- 20 ~~(e)(d)~~ ~~Any any~~ shellfish ~~which that~~ exceed the ~~bacteriological~~ standards in Rule .0430 of this  
21 Subchapter; and
- 22 ~~(d)(c)~~ ~~Any any~~ shellfish ~~which are that~~ have been deemed to be an imminent ~~hazard;~~ hazard.
- 23 (2) ~~"Approved area" means an area determined suitable for the harvest of shellfish for direct market~~  
24 ~~purposes.~~
- 25 (3) ~~"Bulk shipment" means a shipment of loose shellstock.~~
- 26 (4) ~~"Buy boat or buy truck" means any boat which that~~ complies with Rule .0419 of this Subchapter or  
27 truck which complies with Rule .0420 of this Subchapter that is used by a person permitted under these  
28 Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.
- 29 ~~(5)(2)~~ "Certification number" means the unique identification number assigned by the state shellfish control  
30 agency to each certified shellfish ~~dealer.~~ dealer for each location. It consists of a ~~one to five digit one-~~  
31 ~~to-five-digit~~ number preceded by the ~~two letter~~ two-letter state abbreviation and followed by the ~~two~~  
32 ~~letter symbol~~ two-letter abbreviation designating the type of operation certified.
- 33 (3) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- 34 ~~(6)(4)~~ "Critical control point" means a point, ~~step~~ step, or procedure in a food process at which control can  
35 be applied, and a food safety hazard can as a result be prevented, ~~eliminated~~ eliminated, or reduced to  
36 acceptable levels.

- 1 ~~(7)~~(5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological~~ ~~biological~~, or  
2 chemical parameter must be controlled at a critical control point to prevent, ~~eliminate~~ ~~eliminate~~, or  
3 reduce to an acceptable level the occurrence of the identified food safety hazard.
- 4 ~~(8)~~(6) "Depurate" or "Depuration" "deputation" means ~~mechanical purification or the removal of adulteration~~  
5 ~~from live shellstock by any artificially controlled means~~ the process of reducing the pathogenic  
6 organisms that may be present in shellstock by using a controlled aquatic environment as the treatment  
7 process.
- 8 ~~(9)~~(7) "Depuration facility" means ~~the physical structure wherein depuration is accomplished, including all~~  
9 ~~the appurtenances necessary to the effective operation thereof~~ any establishment or place where the  
10 depuration of shellfish occurs by a shellfish dealer.
- 11 ~~(10)~~(8) "Division" means the Division of ~~Environmental Health or its authorized agent~~ Marine Fisheries.
- 12 (9) "Easily cleanable" has the same meaning as defined in the 2017 U.S. Food Code. This definition is  
13 incorporated by reference, not including subsequent amendments and editions. A copy of the  
14 reference material can be found at <https://www.fda.gov/food/fda-food-code/food-code-2017>, at no  
15 cost.
- 16 (10) "Food contact surface" means the parts of equipment, including auxiliary equipment, that may be in  
17 contact with the food being processed, or that may drain into the portion of equipment with which  
18 food is in contact.
- 19 (11) "Food safety hazard" means any biological, ~~chemical~~ ~~chemical~~, or physical property that may cause a  
20 food to be unsafe for human consumption.
- 21 (12) "Good repair" means maintained to function as designed and without defect.
- 22 ~~(12)~~(13) "HACCP plan" means a written document that delineates the procedures a shellfish dealer follows to  
23 implement food safety controls.
- 24 ~~(13)~~(14) "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control~~ ~~control~~, and  
25 monitoring measures initiated by a shellfish dealer to identify microbiological, ~~chemical~~ ~~chemical~~, or  
26 physical food safety hazards ~~which that~~ are likely to occur in shellfish products produced by the dealer.
- 27 ~~(14)~~(15) "Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish  
28 meat from the shell.
- 29 ~~(15)~~(16) "Imminent hazard" means ~~a situation which is likely to cause an immediate threat to human life, and~~  
30 ~~immediate threat of serious physical injury, an immediate threat of serious physical adverse health~~  
31 ~~effects, or a serious risk of irreparable damage to the environment if no immediate action is taken~~ has  
32 the same meaning as defined in G.S. 130A-2.
- 33 ~~(14)~~(17) "In-shell product" means non-living, processed shellfish with one or both shells present.
- 34 ~~(16)~~(18) "Misbranded" means ~~the following~~ as defined in G.S. 106-30 shall include any shellfish that are not  
35 labeled in compliance with these Rules.
- 36 (a) — Any shellfish which are not labeled with a valid identification number awarded by regulatory  
37 authority of the state or territory of origin of the shellfish; or

~~(b) — Any shellfish which are not labeled as required by these Rules.~~

- (19) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (17) ~~"Operating season" means the season of the year during which a shellfish product is processed.~~
- (18) ~~"Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.~~
- (20) "Pests" means animals or insects, including, but not limited to dogs, cats, birds, rodents, flies, and larvae.
- (21) "Plant" means the establishment or place where shellfish processing occurs by shellfish dealers.
- (22) "Processing" or "processed" means any activity associated with the handling, shucking, freezing, packing, labeling, or storing of shellfish in preparation for distribution. This includes the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor.
- (19) ~~"Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.~~
- (20)(23) "Recall procedure" means the detailed procedure the ~~permitted shellfish~~ dealer will use to retrieve product from the market when it is determined that the product ~~may not be safe for human consumption as determined by the State Health Director~~ is adulterated or misbranded.
- (21) ~~"Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.~~
- (22)(24) "Repacking plant" means ~~a shipper,~~ the establishment or place where a shellfish dealer, other than the original shucker-packer, ~~who~~ repacks shucked shellfish into other containers for delivery to the consumer.
- (23)(25) "Reshipper" means ~~a shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers.~~ person that purchases shellfish from a shellfish dealer and sells the product without repacking or relabeling to another shellfish dealer, wholesaler, or retailer.
- (26) "Responsible individual" means the individual present at a shellfish dealer that is the supervisor at the time of the inspection. If no individual is the supervisor, then any employee is the responsible individual.
- (24) ~~"Sanitary survey" means the evaluation of factors having a bearing on the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.~~
- (25)(27) "Sanitize" means ~~the a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619,~~ has the same meaning as defined in 21 CFR 110.3, which is incorporated by reference including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-110/subpart-A/section-110.3>, at no cost.



1 ~~(26)~~(28) "SELL BY date" means a date ~~conspicuously~~ placed on a container or tag by which a consumer is  
2 informed of the latest date the product will remain suitable for sale.

3 ~~(27)~~(29) "Shellfish" means oysters, mussels, ~~scallops~~-scallops, and all varieties of ~~clams~~. ~~However, clams,~~  
4 ~~whether shucked or in the shell, fresh, frozen, whole, or in part. the term~~ The requirements of Sections  
5 ~~.0300 through .0800 of this Subchapter shall not include~~ apply to scallops ~~when~~ if the final product is  
6 the shucked adductor muscle only.

7 (30) "Shellfish dealer" means a plant to which a Shellfish Dealer Permit and Certificate of Compliance is  
8 issued by the Division for the activities of shellstock shipping, shucking or packing, repacking,  
9 reshipping, or depuration.

10 ~~(28)~~(31) "Shellstock" means any live molluscan shellfish ~~which that~~ remain in their shells.

11 ~~(29)~~(32) "Shellstock conveyance" means all trucks, vessels, trailers, or other conveyances used to transport  
12 shellstock.

13 (30) ~~"Shellstock dealer" means a person who buys, sells, stores, or transports or causes to be transported~~  
14 ~~shellstock which was not obtained from a person permitted under these Rules.~~

15 ~~(31)~~(33) "Shellstock plant" means any establishment or place where shellstock are washed, packed, or  
16 otherwise prepared for ~~sale~~ sale by a shellfish dealer.

17 ~~(32)~~(34) "Shucking and packing plant" means any establishment or place where shellfish are shucked and  
18 packed for ~~sale~~ sale by a shellfish dealer.

19 (35) "Use" means employ, set, operate, or permit to be operated or employed.

20 ~~(33)~~(36) "Wet storage" means the ~~temporary placement~~ storage by a shellfish dealer of shellstock from  
21 ~~approved areas, a growing area in the open status and classified as "approved" or "conditionally~~  
22 ~~approved" as defined in Rule .0901 of this Subchapter, in containers or floats in natural bodies of~~ water  
23 water, or in tanks containing natural or synthetic sea water, water at any permitted land-based activity  
24 or facility.

25  
26 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;

27 Eff. February 1, 1987;

28 Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997; January 4, 1994; September 1,  
29 1990; December 1, 1987-1987;

30 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0302 is proposed for amendment as follows:

2

3 **15A NCAC 18A .0302 PERMITS**

4 (a) It shall be unlawful to operate any of the following facilities without first obtaining a Shellfish Dealer Permit  
5 and Certificate of Compliance from the Division of Marine Fisheries:

- 6 (1) depuration facilities;  
7 (2) repacking plants;  
8 (3) shellstock plants; and  
9 (4) shucking and packing plants.

10 (b) It shall be unlawful to operate as a ~~shellstock~~-shellfish dealer without first obtaining a Shellfish Dealer Permit  
11 and Certificate of Compliance from the Division.

12 (c) It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of  
13 Compliance from the Division if shellfish are purchased and shipped out of state.

14 (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.

15 (e) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from  
16 the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.

17 (f) No permit shall be issued by the Division until an inspection by the Division shows that the facility and  
18 equipment comply with all applicable Rules in Sections .0300 through .0800 of this Subchapter. The owner or  
19 responsible ~~person~~-individual shall sign the completed inspection sheet to acknowledge receipt of the inspection  
20 sheet.

21 (g) All permits shall be posted in a conspicuous place in the facility.

22 (h) All permits shall expire on April 30 of each year and are non-transferrable.

23 (i) Plans and specifications for proposed new construction, expansion of operations, or changes in operating  
24 processes shall be submitted to the Division for review and approval prior to beginning construction or making a  
25 change.

26 (j) A permit may be revoked or suspended in accordance with 15A NCAC 03O .0504.

27

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

29 *Eff. February 1, 1987;*

30 *Amended Eff. April 1, 1997;*

31 *Readopted Eff. March 15, ~~2023~~, 2023;*

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

1 15A NCAC 18A .0305 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0305 APPEALS PROCEDURE**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. February 1, 1987;*

7 *Amended Eff. September 1, ~~1990~~1990;*

8 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0401 is proposed for reoption with substantive changes as follows:

2

3

**SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS**

4

5 ~~Rules .0401—.0431 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A .0401—~~  
 6 ~~.0431); has been transferred and recodified from Rules .0901—.0931 of Title 10 Subchapter 10B of the North Carolina~~  
 7 ~~Administrative Code (T10.10B .0901—.0931), effective April 4, 1990.~~

8

9

**15A NCAC 18A .0401 APPLICABILITY OF RULES**

10 The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0302 of this  
 11 Subchapter, including shellfish dealers, shellstock plants, reshippers, shucking and packing plants, repacking plants,  
 12 deputation facilities, permittees with facilities approved for wet storage, and all other businesses and persons that buy,  
 13 sell, transport, or ship shellfish. These ~~Rules do~~ rules shall not apply to ~~persons~~ individuals possessing shellfish for  
 14 personal use.

15

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

17

Eff. February 1, 1987;

18

Amended Eff. April 1, 1997; December 1, ~~1987-1987;~~

19

Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0402 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 18A .0402 GENERAL REQUIREMENTS FOR OPERATION**

4 ~~(a) During the operating season the plant shall be used for no purpose other than the handling of shellfish. All unnecessary equipment and materials shall be removed from the plant and the floors kept clear for thorough cleaning.~~

5  
6 ~~(b) (a) All floors, walls, shucking benches and stools, shucking blocks, tables, skimmers, blowers, colanders, buckets, or any other equipment or utensils used in the processing operation shall be cleaned and sanitized daily, or more frequently as may be necessary during the day's operation to prevent the introduction of undesirable microbiological organisms and filth into the shellfish product. Shellfish dealers shall provide mechanical refrigeration that is capable of maintaining an ambient temperature of 45°F or less and be sized to handle one day's production. The mechanical refrigeration shall include an automatic temperature regulating control and be equipped with an accurate, operating thermometer in the refrigerated storage area. If the sole means of refrigeration is a portable unit, that unit shall be capable of operating utilizing alternating current electrical power that will allow the unit to be plugged into a power supply during transport and at the certified facility.~~

7  
8  
9  
10  
11  
12  
13  
14  
15 ~~(e) (b) Ceilings and windows shall also be kept clean. Refrigerators, refrigeration rooms, and ice boxes shall be washed and sanitized. Food contact surfaces shall be easily cleanable, corrosion-resistant, constructed of non-toxic and food-grade materials, and shall be kept in good repair. Shellfish dealers shall only use food contact surface equipment that conforms to standards found in the guidance document within the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance titled "Shellfish Industry Equipment Construction Guide", which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost.~~

16  
17  
18  
19  
20  
21  
22  
23 ~~(c) Food contact surfaces of equipment, utensils, and containers shall be cleaned at the end of each day or operation and shall be sanitized prior to the start-up of each day's activities. Food contact surfaces shall also be cleaned and sanitized following any interruption during which the surfaces have become contaminated.~~

24  
25  
26 ~~(d) Non-food contact surfaces such as equipment, floors, walls, ceilings, and windows shall be kept clean and in good repair.~~

27  
28 ~~(d) (e) Wheelbarrows, measures, baskets, shovels, and other implements used in the handling of shellstock shall not be used for any other purpose and shall be cleaned and stored in the shellstock room when not in prior to use.~~

29  
30 ~~(f) Shellfish dealers shall provide a temperature measuring device accurate to +/- 2°F for use in monitoring product temperatures.~~

31  
32  
33 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*  
34 *Eff. February 1, 1987-1987;*  
35 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0403 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0403 SUPERVISION AND TRAINING**

4 (a) The ~~owner~~ shellfish dealer shall personally supervise or shall designate ~~an~~ a responsible individual whose principal  
5 duty shall be to supervise and be responsible for compliance with the ~~Rules~~ rules of this Subchapter. No unauthorized  
6 ~~persons~~ individuals shall be allowed in any processing area of the plant during periods of operation. For the purpose  
7 of this Rule, "unauthorized individual" shall mean an individual that is not designated and trained by the shellfish  
8 dealer or responsible individual to perform specific processing tasks in the facility.

9 (b) The shellfish dealer shall ensure that all employees that manufacture, process, pack, or hold food obtain training  
10 in the principles of food hygiene and food safety, including the importance of employee health and personal hygiene,  
11 in accordance with 21 CFR 117.4, which is incorporated by reference, including subsequent amendments and editions.  
12 A copy of the reference material can be found at [https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-117/subpart-A/section-117.4)  
13 117/subpart-A/section-117.4 at no cost. Employees shall complete the training within 30 days following the initial  
14 hire date. The shellfish dealer or responsible individual shall maintain a record of the completed training.

15

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

17 *Eff. February 1, ~~1987~~1987;*

18 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0404 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0404 CONSTRUCTION**

4 Shellfish plants shall be ~~adequate in size and construction~~ sized and constructed to permit compliance with the  
5 operational provisions of Sections .0300 through .0800 of this Subchapter.

6

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

8 *Eff. February 1, ~~1987-1987;~~*

9 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0405 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0405 ~~PLANT LOCATION~~ FACILITY FLOODING**

4 (a) Shellfish plants shall be located so that they will not be subject to flooding by high tides.

5 (b) If the facility floors are flooded, processing shall be discontinued until flood waters have receded and the facility  
6 and equipment are cleaned and sanitized.

7 (c) Any shellfish that may have been contaminated by flood waters shall be deemed adulterated and shall be destroyed.

8

9 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;~~*

10 *Eff. February 1, ~~1987~~1987;*

11 *Readopted Eff. April 1, 2024.*



1 15A NCAC 18A .0406 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0406 FLOORS**

4 Floors shall be ~~of~~ concrete or other equally impervious material, constructed so that they ~~may be~~ are easily and  
5 ~~thoroughly cleaned~~ cleanable, and shall be sloped so that water drains ~~completely and rapidly~~. For new construction,  
6 ~~the joints between walls and floors shall be rounded to expedite cleaning, completely~~, and kept in good repair. The  
7 junction between floors and walls shall be sealed to render them impervious to water in areas where the floor gets wet  
8 and is used to store shellfish, process food, or clean equipment and utensils.

9

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

11 *Eff. February 1, ~~1987~~1987;*

12 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0407 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0407 WALLS AND CEILINGS**

4 ~~Walls to a height of at least two feet above the floor shall be constructed of smooth concrete or other equally~~  
5 ~~impervious material. The remainder of the walls and ceilings shall be smooth concrete, cement plaster, or other~~  
6 ~~material approved by the Division and shall be painted with a light color washable paint.~~

7 (a) Walls and ceilings in areas where shellfish are stored, handled, processed, or packaged or where food handling  
8 equipment or packaging materials are stored shall be constructed of smooth, easily cleanable, non-corrosive,  
9 impervious material. The walls and ceilings in these areas shall also be light-colored, such as white in color, so that  
10 unclean surfaces can be detected.

11 (b) Doors and windows shall be tightly fitted and kept in good repair so as to keep pests and weather out of the facility.

12

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

14 *Eff. February 1, ~~1987-1987;~~*

15 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0408 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0408 LIGHTING**

4 (a) Natural or artificial lighting shall be provided in all parts of the plant. Light bulbs, fixtures, or other glass suspended  
5 within the plant shall be safety type or otherwise protected to prevent contamination in case of breakage. Lighting  
6 intensities shall be a minimum of 25 ~~foot candles~~ foot-candles on working surfaces in packing and shucking ~~rooms.~~  
7 rooms and a minimum of 10 foot-candles measured at a height of 30 inches above the floor throughout the rest of the  
8 processing portion of the facility.

9 (b) Light bulbs, fixtures, or other glass within the plant shall be shatterproof or shielded to prevent food contamination  
10 in case of breakage.

11

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

13 *Eff. February 1, ~~1987~~ 1987;*

14 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0409 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0409 VENTILATION**

4 Ventilation shall be provided to ~~eliminate~~prevent odors and ~~condensation~~condensation from contaminating shellfish,  
5 food contact surfaces, or food packaging materials.

6

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

8 *Eff. February 1, ~~1987-1987;~~*

9 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0410 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0410 FLY-PEST CONTROL**

4 (a) All ~~outside-exterior~~ openings shall be ~~screened, screened~~ or provided with wind ~~curtains curtains~~, or be provided  
5 with other fly control methods approved by the Division, to prevent the entrance of pests. All screens shall be kept in  
6 good repair. All ~~outside-exterior~~ doors shall open outward and shall be self-closing.

7 (b) The use and storage of pesticides and rodenticides shall comply with all applicable ~~state-State~~ and federal  
8 guidelines, laws and rules.

9 (c) No pets or other animals shall be allowed in those portions of the facility where shellfish, food handling equipment,  
10 or packaging materials are stored, handled, processed, or packaged.

11

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

13 *Eff. February 1, ~~1987-1987;~~*

14 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0411 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0411 RODENT AND ANIMAL CONTROL**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. February 1, ~~1987~~1987;*

7 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0412 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0412 PLUMBING AND HAND WASHING FACILITIES**

4 (a) All plumbing shall be in compliance with applicable plumbing codes.

5 (b) Hand washing facilities shall be provided with running water at a minimum temperature of 100°F dispensed from  
6 a hot and cold combination faucet.

7 (c) Hand washing facilities shall be provided in or adjacent to each bathroom and in shucking and packing rooms.  
8 Hand washing facilities in packing areas shall be located where supervisors can observe employee use.

9 (d) Hand washing facilities shall be separate from three-compartment or other sinks used for cleaning equipment and  
10 utensils.

11 (e) Soap, single service towels in protected dispensers, and an easily cleanable waste receptacle shall be available and  
12 used at hand washing facilities. Other hand drying devices may be used if approved by the Division of Marine Fisheries  
13 based upon being equally effective at drying hands without the potential for recontamination.

14

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

16 *Eff. February 1, ~~1987-1987;~~*

17 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0413 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0413 WATER SUPPLY**

4 ~~(a) The water supply shall be from a source approved by the Division.~~

5 ~~(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission~~  
6 ~~for Public Health's rules governing water supplies. Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be~~  
7 ~~obtained from the Division.~~

8 (a) The water supply used shall be in accordance with 15A NCAC 18A .1720 through .1728, 15A NCAC 18C, or 02  
9 NCAC 09C .0703, which are incorporated by reference, including subsequent amendments.

10 (b) If the water supply is from a private source, samples for bacteriological analysis shall be collected by the Division  
11 of Marine Fisheries prior to use and after the water supply has been repaired or disinfected, and submitted for analysis  
12 to the State Laboratory of Public Health or other laboratory that is certified in accordance with 10A NCAC 42C .0102,  
13 which is incorporated by reference, including subsequent amendments.

14 (c) Cross-connections with unapproved water supplies shall be prohibited. A backflow or back siphonage of a solid,  
15 liquid, or gas containment into the water supply shall be precluded by use of an air gap or backflow prevention device  
16 in accordance with applicable plumbing codes.

17 (d) Hot and cold running water under pressure shall be provided to food preparation, utensil, and hand washing areas  
18 and any other areas in which water is required for cleaning. Running water under pressure shall be provided in  
19 sufficient quantity to carry out all food preparation, utensil washing, hand washing, cleaning, and other water-using  
20 operations.

21

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

23 *Eff. February 1, 1987;*

24 *Amended Eff. September 1, ~~1990~~1990;*

25 *Readopted Eff. April 1, 2024.*



1 15A NCAC 18A .0414 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0414 TOILET FACILITIES**

4 ~~Separate and convenient toilet facilities shall be provided for each sex employed and shall comply with the N.C. State~~  
5 ~~Building Code, Volume 2, Plumbing. Floors, walls, and ceilings shall be smooth, easily cleanable and kept clean.~~  
6 ~~Fixtures shall be kept clean. All toilet wastes and other sewage shall be disposed of in a public sewer system or in the~~  
7 ~~absence of a public sewer system, by an on site sewage disposal system approved by the Department in accordance~~  
8 ~~with G.S. 130A-335.~~

9 (a) Toilets shall be provided in the plant by the owner or responsible individual and shall be kept clean and in good  
10 repair.

11 (b) Toilet tissue, in a holder, shall be provided by the owner or responsible individual.

12 (c) Toilet room doors shall not open directly into a processing area and shall be tight-fitting and self-closing.

13 (d) All toilet wastes and other sewage shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC  
14 02H .0200, which are incorporated by reference, including subsequent amendments.

15

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

17 *Eff. February 1, 1987;*

18 *Amended Eff. September 1, ~~1990; 1990;~~*

19 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0415 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0415 ~~WASTE DISPOSAL~~PREMISES**

4 ~~Shells, washings, and other wastes shall be disposed of in a sanitary landfill or in a sanitary manner approved by the~~  
5 ~~Division.~~

6 (a) The premises shall be maintained free from conditions that may constitute an attractant, breeding place, or  
7 harborage for pests such as unmowed weeds or grass, uncontained litter or waste, or unused equipment.

8 (b) To prevent pests and odors, shells and other solid waste shall not be permitted to accumulate on the premises.

9

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

11 *Eff. February 1, ~~1987.~~1987;*

12 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0416 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0416 PERSONAL HYGIENE**

4 (a) All employees shall wash their hands thoroughly with soap and running water before beginning work and again  
5 after each ~~interruption.~~interruption or if their hands may have become soiled or contaminated. Signs to this effect  
6 shall be posted in conspicuous places in the plant by the operator. Hand washing signs shall be posted by the owner or  
7 responsible individual at each hand washing facility in a language understood by employees.

8 ~~(b) All persons handling shucked shellfish shall sanitize their hands before beginning work and again after each~~  
9 ~~interruption.~~

10 ~~(c)~~(b) All ~~persons~~individuals employed or engaged in the ~~handling, shucking, or packing~~packing, or repacking of  
11 shellfish shall wear clean, washable outer clothing. Clean plastic or rubber aprons, overalls, and rubber gloves shall  
12 be considered satisfactory.

13 (c) All individuals employed or engaged in the shucking, packing, or repacking of shellfish shall wear hair restraints  
14 and have clean fingernails free from nail polish and that are short enough to not extend past the fingertips. Employees  
15 shall not wear jewelry other than easily cleanable rings. The use of absorbent wraps or absorbent finger cots shall not  
16 be permitted.

17 (d) Employees shall not eat, drink, use electronic cigarettes or vaping products, or use tobacco in any form in the  
18 rooms where shellfish are stored, processed, or handled.

19 ~~(e) All persons~~An individual known to be a carrier of any disease ~~which that~~ can be transmitted through the handling  
20 of shellfish or who ~~have~~has an infected wound or open lesion on any exposed portion of ~~their bodies~~the body shall  
21 be prohibited from handling ~~shellfish.~~shellfish or coming into contact with food contact surfaces.

22

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

24 *Eff. February 1, ~~1987-1987;~~*

25 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0417 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0417 ~~LOCKER~~EMPLOYEES' PERSONAL ARTICLES**

4 ~~A separate room or locker shall be provided for storing employees' street clothing, aprons, gloves, and personal~~  
5 ~~articles. Employees' street clothing, aprons, gloves, food, drink, and personal articles shall be stored in a room or~~  
6 ~~locker separate from any area where shellfish are shucked or packed or any area that is used for the cleaning or storage~~  
7 ~~of utensils.~~

8

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

10 *Eff. February 1, ~~1987~~1987;*

11 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0418 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0418 SUPPLY STORAGE**

4 ~~(a) Storage room shall be provided for storing shipping containers, tags, and other supplies. Shipping containers,~~  
5 boxes, and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.

6 (b) Pesticides, rodenticides, chemical agents, sanitizers, and other toxic substances shall be stored separate from  
7 processing areas or food contact surfaces. Each of the following categories of toxic substances shall be stored separate  
8 from one another:

9 (1) pesticides and rodenticides;

10 (2) detergents, sanitizers, and cleaning agents; and

11 (3) caustic acids, polishes, and other chemicals.

12 (c) Cleaning compounds, sanitizers, and other toxic substances shall be labeled and used in accordance with the  
13 manufacturer's label directions.

14

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

16 *Eff. February 1, ~~1987-1987;~~*

17 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0419 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0419 HARVEST ~~BOATS~~VESSELS AND VEHICLES**

4 ~~All boats used in the harvesting and handling of shellstock shall be kept clean and repaired such that the shellstock~~  
5 ~~thereon shall not be subject to adulteration by bilge water, by leakage of water from prohibited areas, or by other~~  
6 ~~means. Decks, holds, or bins used for shellstock on boats shall not be washed with water from prohibited areas. Human~~  
7 ~~wastes shall not be discharged into shellfish waters.~~

8 (a) It shall be unlawful to use vessels or vehicles that are engaged in the commercial harvest, handling, or transport  
9 of shellstock in such a manner that allows contact of shellstock with bilge water, standing water, or other sources of  
10 contamination in the vessel or vehicle.

11 (b) It shall be unlawful to allow dogs or other animals on or inside vessels or vehicles that are engaged in the  
12 commercial harvest or transport of shellstock.

13 (c) It shall be unlawful to discharge human waste overboard from vessels or vehicles used in the harvesting of  
14 shellstock.

15

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

17 *Eff. February 1, ~~1987-1987;~~*

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

1 15A NCAC 18A .0420 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0420 TRANSPORTING SHELLSTOCKSHELLFISH**

4 (a) All ~~shellstock shellfish~~ storage areas in trucks, ~~buy boats, buy trucks, vessels,~~ trailers, and other conveyances used  
5 for transporting ~~shellstock shellfish~~ shall be enclosed, tightly constructed,  ~~painted with a light color washable paint,~~  
6 kept clean, and shall be subject to inspection by the ~~Division.~~ Division of Marine Fisheries.

7 (b) ~~Shellstock shall be shipped under temperature and sanitary conditions in accordance with these Rules which will~~  
8 ~~keep them alive and clean and will prevent adulteration or deterioration. All shellstock shall be kept under mechanical~~  
9 ~~refrigeration at a temperature of 45°F (7.1°C) or below. All conveyances used to transport shellstock shall be equipped~~  
10 ~~with an operating thermometer. It shall be unlawful to transport shellstock and in-shell product unless shipped under~~  
11 ~~mechanical refrigeration and the shipping conveyance is pre-chilled and maintained at an ambient temperature of 45°F~~  
12 ~~or below. The storage area of the shipping conveyance shall be equipped with an accurate, operating thermometer.~~

13 (c) ~~Buy boats and buy trucks shall be kept clean with water from a source approved by the Division under Rule .0413~~  
14 ~~of this Subchapter. Buy boats and buy trucks shall provide storage space for clean shipping containers, identification~~  
15 ~~tags, and records. It shall be unlawful to transport shucked shellfish unless maintained under temperature control of~~  
16 ~~45°F or below.~~

17

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

19 *Eff. February 1, 1987;*

20 *Amended Eff. May 1, ~~1994-1994;~~*

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

1 15A NCAC 18A .0421 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 18A .0421 ~~DAILY RECORD~~RECORDS**

4 (a) All ~~permitted persons shellfish dealers~~ who conduct any business of buying, selling, or shipping shellfish shall  
5 keep an accurate, daily record ~~which that~~ shall show the names ~~and addresses~~ of all persons from whom shellfish are  
6 received, ~~the address of any shellfish dealer from whom shellfish are received,~~ the location of the source of shellfish,  
7 and the names and addresses of all persons to whom shellfish are sold or ~~shipped,~~ shipped with the exception of retail  
8 sales. These records ~~shall be recorded and~~ shall be kept on file for a minimum of one year, ~~year for fresh shellfish,~~  
9 and a minimum of two years for frozen shellfish. All records shall be open to inspection by the Division of Marine  
10 Fisheries at the dealer facility at any time during business hours.

11 (b) All shellfish dealers who receive shellstock from licensed harvesters shall record the following information at the  
12 time of receipt:

- 13 (1) harvester name;  
14 (2) harvest area;  
15 (3) time of the start of harvest;  
16 (4) quantity and type of shellfish received;  
17 (5) time shellfish were received; and  
18 (6) time shellfish were mechanically refrigerated.

19 (c) Each shellfish shipment shipped by a shellfish dealer shall be accompanied by a shipping document that includes:

- 20 (1) name, address, and certification number of shipping dealer;  
21 (2) name and address of major consignee;  
22 (3) type and quantity of shellfish product;  
23 (4) date and time of shipment;  
24 (5) documentation that shipping conveyance is pre-chilled at 45°F or below prior to shipment; and  
25 (6) temperature of shellstock recorded by shipping dealer at time of shipment.

26 (d) A dealer receiving a shellfish shipment from another shellfish dealer shall record the temperature of the shipping  
27 conveyance and the temperature of the shellfish product received. These records shall be kept on file for a minimum  
28 of one year for fresh shellfish, and a minimum of two years for frozen shellfish. All records shall be open to inspection  
29 by the Division at the dealer facility at any time during business hours.

30 (e) Within 72 hours of any purchase or sale of shellfish, each purchase or sale shall be entered into a permanently  
31 bound ledger book, computer record, or any other method that permanently records the information and is organized  
32 so that it can be reviewed by the Division.

33  
34 *History Note: Authority ~~G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*  
35 *Eff. February 1, 1987;*  
36 *Amended Eff. August 1, ~~1998-1998;~~*  
37 *Readopted Eff. April 1, 2024.*



1 15A NCAC 18A .0422 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0422 SHELLSTOCK CLEANING**

4 No person shall offer for sale any shellstock ~~which~~that have not been washed free of ~~bottom harvest area~~ sediments  
5 and detritus. Water used for shellstock washing shall be obtained from a water source in accordance with Rule .0413  
6 of this Section or from a growing area in the open status and classified as "approved" or "conditionally approved" as  
7 defined in Rule .0901 of this Subchapter.

8

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

10 Eff. February 1, ~~1987-1987;~~

11 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0423 is proposed for readoption without substantive changes as follows:

2

3 **15A NCAC 18A .0423 SALE OF LIVE SHELLSTOCK**

4 Only live shellstock shall be offered for sale.

5

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

7 *Eff. February 1, ~~1987-1987;~~*

8 *Readopted Eff. April 1, 2024.*

9

1 15A NCAC 18A .0424 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0424 SHELLFISH RECEIVING**

4 No ~~person shellfish dealer~~ shall receive or ~~accept~~-accept:

5 (1) any ~~shellfish~~ shellstock from:

6 (a) a licensed shellfish harvester ~~unless~~-unless:

7 (i) the container or package bears the harvest tag or label required by these Rules, as  
8 required in Rule 15A NCAC 03K .0109 and in accordance with the HACCP plan;

9 and

10 (ii) the shellstock was harvested from a growing area in the open status and classified  
11 as "approved" or "conditionally approved" as defined in Rule .0901 of this  
12 Subchapter and as indicated on the harvest tag; or

13 (b) another shellfish dealer unless the container or package bears the tag as required in Rule  
14 .0425 of this Section or, in the case of a bulk shipment, Rule .0426 of this Section; and

15 (2) any shellfish from another shellfish dealer unless:

16 (a) it is accompanied by the documentation required in Rule .0421(c) of this Section; and

17 (b) the shellfish temperature and other critical limits are in compliance with the HACCP plan.

18

19 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*  
20 *Eff. February 1, 1987;*  
21 *Amended Eff. April 1, ~~1997~~.1997;*  
22 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0426 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0426 BULK SHIPMENTS BETWEEN SHELLFISH DEALERS**

4 (a) For the purpose of this Rule:

5 (1) "bulk shipment" shall mean a shipment of a shellstock lot between shellfish dealers.

6 (2) "shellstock lot" shall mean a single type of bulk shellstock or containers of shellstock of no more  
7 than one day's harvest from a single growing area harvested by one or more harvesters.

8 ~~(b) Shipment in bulk~~ Bulk shipments shall not be made except ~~where~~ if the shipment is from only one consignor to  
9 one consignee and accompanied by the uniform shipping tag-consignee, both of which shall be shellfish dealers.

10 (c) When a shellstock lot is shipped, if multiple containers are used they shall be on a wrapped pallet, in a tote, in a  
11 net bailer, or other container and the unit shall be tagged with a single tag in accordance with Rule .0425 of this  
12 Section. The single tag shall also include a statement that "All shellstock containers in this lot have the same harvest  
13 date and area of harvest" and shall include the number of individual containers in the unit.

14 (d) The shellfish dealer shall provide a transaction record that accompanies the bulk shipment that contains the same  
15 information required on a dealer's tag in Rule .0425 of this Section and additionally states the name of the consignee,  
16 which shall be a shellfish dealer.

17 (e) Bulk shipments shall be kept above the floor using pallets to prevent the shellstock from becoming contaminated,  
18 unless the shipping conveyance has a channeled floor.

19

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

21 *Eff. February 1, ~~1987~~1987;*

22 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0427 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0427 SHELLSTOCK ~~SHELLFISH~~ STORAGE**

4 ~~Shellstock held in wet or dry storage must be kept so that they will not become adulterated. All shellstock held in dry~~  
5 ~~storage shall be kept under mechanical refrigeration at a temperature of 45°F (7.1°C) or below. All refrigerated~~  
6 ~~shellstock storage areas shall be equipped with an operating thermometer.~~

7 (a) It shall be unlawful to fail to keep shellstock and in-shell product under mechanical refrigeration at a temperature  
8 of 45°F or below unless otherwise required by proclamation issued under the authority of Rule 15A NCAC 03K .0110  
9 or otherwise specified in the HACCP plan.

10 (b) Refrigerated storage areas shall be equipped with an accurate, operating thermometer.

11 (c) It shall be unlawful to fail to keep shucked shellfish under temperature control at a temperature of 45°F or below.

12

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

14 *Eff. February 1, 1987;*

15 *Amended Eff. May 1, 1994; December 1, ~~1987, 1987;~~*

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

1 15A NCAC 18A .0428 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0428 SAMPLING AND TESTING**

4 Samples of shellfish may be taken and ~~bacteriologically~~ examined for any public health reason under the authority of  
5 the Marine Fisheries Commission by agents of the Division of Marine Fisheries at any time or place. This may include  
6 bacteriological examination or analysis for poisonous or deleterious substances as listed in the latest approved edition  
7 of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV:  
8 Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or  
9 Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and  
10 editions. A copy of the reference material can be found at [https://www.fda.gov/food/federalstate-food-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)  
11 programs/national-shellfish-sanitation-program-nssp, at no cost. Samples of shellfish shall be furnished, upon ~~request,~~  
12 request of the Division, by operators of plants, trucks, carriers, stores, restaurants, and other places where shellfish are  
13 sold.

14

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

16 Eff. February 1, 1987-1987;

17 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0429 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0429 ~~STOPSALE~~ EMBARGO OR DISPOSAL OF SHELLFISH**

4 (a) When it has been determined by the Division of Marine Fisheries that shellfish have not been grown, harvested,  
5 stored, treated, transported, handled, shucked, ~~packed~~ packed, or offered for sale in compliance with ~~15A NCAC 18A~~  
6 Sections .0300 through .0900 of this Subchapter, those shellfish ~~shall~~ may be deemed ~~adulterated~~ adulterated in  
7 accordance with Rule .0438 of this Section, except as required in Rules .0405 and .0430 of this Section.

8 (b) Shellfish or shellfish products processed or prepared for sale to the public determined to be adulterated or  
9 misbranded shall be subject to ~~stopsale or disposal by the Division. The Division may temporarily or permanently~~  
10 ~~issue an order to stop sale or condemn, destroy, or otherwise dispose of all shellfish or shellfish containers found to~~  
11 ~~be adulterated or misbranded.~~ embargo or disposal by the Division in accordance with G.S. 113-221.4. The authority  
12 of marine fisheries inspectors to seize shellfish or shellfish products pursuant to G.S. 113-137 shall not be affected by  
13 this Rule.

14 ~~(c) All shellfish shall be disposed of in a manner prescribed by the Division or by a court of appropriate jurisdiction.~~

15 (c) If voluntary disposal of adulterated or misbranded shellfish or shellfish products is alternatively chosen by the  
16 shellfish dealer, responsible individual, or other person or facility specified in Rule .0401 of this Section, the product  
17 disposal shall be observed by a Division employee.

18

19 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;~~*  
20 *Eff. February 1, ~~1987~~ 1987;*  
21 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0430 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0430 BACTERIOLOGICAL AND CONTAMINATION STANDARDS**

4 Shellfish shucked or in the shell and intended or offered for sale ~~in North Carolina that exceed an Escherichia coli~~  
5 ~~Most Probable Number of 230 per 100 grams of sample or a total bacteria count of more than 500,000 per gram or~~  
6 ~~contain pathogenic organisms in sufficient numbers to be hazardous to the public health shall be deemed adulterated~~  
7 ~~by the Division. Shellfish contaminated by any other substance which renders it unsafe for human consumption shall~~  
8 ~~be deemed adulterated by the Division.~~ shall be deemed adulterated by the Division of Marine Fisheries if:

9 (1) the concentration of Escherichia coli exceeds a Most Probable Number (MPN), as defined in Rule

10 .0901 of this Subchapter, of 230 per 100 grams of sample;

11 (2) the total bacteria count, as determined by a standard plate count, exceeds 500,000 colony-forming  
12 units, as defined in Rule .0901 of this Subchapter; or

13 (3) the shellfish contain any contaminant that renders it unsafe for human consumption in accordance  
14 with the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the  
15 Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas;  
16 Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in  
17 Seafood, which is incorporated by reference, including subsequent amendments and editions. A  
18 copy of the reference material can be found at [https://www.fda.gov/food/federalstate-food-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)  
19 programs/national-shellfish-sanitation-program-nssp, at no cost.

20

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

22 *Eff. February 1, ~~1987-1987;~~*

23 *Readopted Eff. April 1, 2024.*



1 15A NCAC 18A .0432 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0432 PUBLIC DISPLAY OF CONSUMER ADVISORY**

4 All ~~facilities and persons~~ shellfish dealers permitted ~~in~~ by Rule .0302 of this Subchapter and all other businesses and  
5 persons that sell or serve raw shellfish shall post one of the following consumer advisories or an equivalent statement  
6 in a conspicuous place where it may be readily observed by the public ~~the following consumer advisory:~~ in the area  
7 where raw shellfish is sold or served:

8 (1) "Consumer Advisory

9 Eating raw or undercooked oysters, ~~clams-clams,~~ whole scallops, or mussels  
10 may cause severe illness. People with the following conditions are at  
11 especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or  
12 blood disorder, or weakened immune system. Ask your doctor if you are  
13 unsure of your risk. If you eat shellfish and become sick, see a doctor  
14 ~~immediately."~~ immediately."; or

15 (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs  
16 may increase your risk of foodborne illness, especially if you have certain  
17 medical conditions."

18 Nothing in this Rule is intended to supersede regulation of restaurants or other establishments subject to 15A  
19 NCAC 18A Section .2600 or the U.S. Food Code.

20

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

22 *Temporary Adoption Eff. October 12, 1998; February 1, 1998;*

23 *Eff. April 1, ~~1999-1999;~~*

24 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0433 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0433 HAZARD ANALYSIS**

4 Each shellfish dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to  
5 occur for each kind of shellfish product processed by that dealer and to identify the preventative measures that the  
6 dealer can apply to control those hazards. For the purpose of this Rule, "reasonably likely to occur" shall mean a food  
7 safety hazard for which a processor would establish controls because experience, illness data, scientific reports, or  
8 other information provide a basis to conclude that there is a reasonable possibility that it will occur in the absence of  
9 those controls, as defined in 21 CFR 123.6, which is incorporated by reference, including subsequent amendments  
10 and editions. A copy of the reference material can be found at [https://www.ecfr.gov/current/title-21/chapter-  
11 1/subchapter-B/part-123](https://www.ecfr.gov/current/title-21/chapter-1/subchapter-B/part-123), at no cost.

12

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

14 *Eff. August 1, ~~2000; 2000;~~*

15 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0434 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 18A .0434 HACCP PLAN**

4 (a) Each shellfish dealer shall have and implement a written HACCP Plan—plan specific to each kind of shellfish  
5 product processed. The owner or authorized designee—individual shall sign the plan when implemented and after any  
6 modification—implemented, which shall signify that the plan has been accepted for implementation by the dealer. The  
7 HACCP plan shall also be signed by the owner or authorized individual after any modification or verification of the  
8 plan as required by this Rule. The plan shall be reviewed and updated, if necessary, at least annually.—The plan shall,  
9 at a minimum:

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

19 For the purpose of this Rule, "reasonably likely to occur" shall mean a food safety hazard for which a processor would  
20 establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude  
21 that there is a reasonable possibility that it will occur in the absence of those controls, as defined in 21 CFR 123.6,  
22 which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material  
23 can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123>, at no cost.

24 (b) With the exception of a shellfish dealer that has not been permitted for interstate commerce, the following  
25 functions shall be performed by an individual who has successfully completed training in the application of HACCP  
26 principles to shellfish processing:

- 27 (1) developing a HACCP plan;
- 28 (2) reassessing and modifying the HACCP plan; and
- 29 (3) performing the record review specified in Paragraph (d) of this Rule.

30 (c) If a deviation from a critical limit occurs, the shellfish dealer shall take corrective action in accordance with 21  
31 CFR 123.7, which is incorporated by reference, including subsequent amendments and editions. A copy of the  
32 reference material can be found at [https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-A/section-123.7#p-123.7(b))  
33 A/section-123.7#p-123.7(b), at no cost.

34 (d) At least annually, each shellfish dealer shall verify that the HACCP plan is being implemented to control food  
35 safety hazards. Verification procedures shall include:

- 36 (1) a reassessment of the plan when a change occurs that could affect the hazard analysis, and a review  
37 of any consumer complaints that have been received; and

1           (2)     a review, including signing and dating by the trained individual or responsible individual, of the  
2                    records that document the monitoring of critical control points, the taking of corrective actions, and  
3                    the calibrating of any process-monitoring instruments. This review shall occur within one week of  
4                    the day that the records are made.

5     (e) All records required by this Rule shall be retained at the dealer facility for at least one year after the date they were  
6     prepared in the case of refrigerated products, and at least two years after the date they were prepared in the case of  
7     frozen products and shall include:

8           (1)     the name and location of the dealer;

9           (2)     the date and time of the activity that the record reflects;

10          (3)     the signature or initials of the individual performing the operation; and

11          (4)     the identity of the product and the production code, if any.

12

13     *History Note:*     Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;

14                    Eff. August 1, ~~2000~~-2000;

15                    Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0435 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0435 SANITATION MONITORING REQUIREMENTS**

4 (a) Each shellfish dealer shall monitor, at a minimum, monitor the following sanitation ~~items~~items when the plant is  
5 operational:

6 (1) ~~Safety~~safety of water;

7 (2) ~~Condition~~condition and cleanliness of food contact surfaces;

8 (3) ~~Prevention~~prevention of cross-contamination~~;cross-contamination~~;

9 (4) ~~Maintenance~~maintenance of hand washing, hand ~~sanitizing~~sanitizing, and toilet facilities;

10 (5) ~~Protection~~protection of shellfish, shellfish packaging ~~materials~~materials, and food contact surfaces  
11 from adulteration~~;becoming adulterated~~;

12 (6) ~~Proper~~proper labeling, ~~storage~~storage, and use of toxic compounds;

13 (7) ~~Control~~control of employees with adverse health conditions; and

14 (8) ~~Exclusion~~exclusion of pests from the facility.

15 (b) Monitoring records of these sanitation items shall be recorded at least daily and shall include the date and time of  
16 the activity that the record reflects, and the signature or initials of the individual performing the operation. The records  
17 shall be reviewed and signed by the owner or designated individual within one week of recording.

18

19 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*  
20 *Eff. August 1, ~~2000~~2000;*  
21 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0436 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0436 MONITORING RECORDS**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. August 1, ~~2002~~2002;*

7 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0437 is proposed for adoption as follows:

2  
3 **15A NCAC 18A .0437 IN-SHELL PRODUCT**

4 (a) In-shell product shall be kept under mechanical refrigeration at a temperature of 45°F or below.

5 (b) In-shell product shall be tagged or labeled to contain the following indelible and legible information listed in  
6 sequential order:

7 (1) the shellfish dealer's name, address, and certification number assigned by the shellfish control  
8 agency in the state of the shellfish dealer's location;

9 (2) the original shipper's certification number, except if the in-shell product is deperated, the original  
10 shipper's certification number is not required;

11 (3) a "SELL BY DATE" that indicates the shelf-life or the words "BEST IF USED BY" followed by a  
12 date when the product would be expected to reach the end of its shelf-life. The date shall include  
13 month, day, and year;

14 (4) if the in-shell product is deperated, the deperation cycle number or lot number;

15 (5) the most precise identification of the harvest location as is practicable, including the initials of the  
16 state of harvest, and the state or local shellfish control authority's designation of the growing area  
17 by indexing, administrative, or geographic designation. If the authority in another state has not  
18 indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long  
19 Bay, shellfish lease or franchise number, or lot number);

20 (6) the type and quantity of in-shell product; and

21 (7) the following statement in bold type on each tag or label: "THIS TAG IS REQUIRED TO BE  
22 ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT  
23 ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN  
24 LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT  
25 DATE) \_\_\_\_\_." OR "THIS LABEL IS REQUIRED TO BE ATTACHED UNTIL  
26 CONTAINER IS EMPTY OR IS RELABELED AND THEREAFTER KEPT ON FILE, IN  
27 CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST  
28 SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) \_\_\_\_\_."

29 (c) In-shell product shall include one of the following consumer advisories, or equivalent statement:

30 (1) "Consumer Advisory

31 Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness.  
32 People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes,  
33 cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure  
34 of your risk. If you eat shellfish and become sick, see a doctor immediately."

35 (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk  
36 of foodborne illness, especially if you have certain medical conditions."

37 (d) The statement "Keep Refrigerated" or an equivalent statement shall be included on the tag or label.

1 (e) If in-shell product for retail sale is packed in individual containers of five pounds or less and shipped in a master  
2 container that includes a tag in compliance with Paragraph (b) of this Rule, the individual containers of five pounds  
3 or less shall not require tags as specified in Paragraph (b) of this Rule if a lot code number is included on each container  
4 that allows traceback of the in-shell product to the master container. A consumer advisory shall be included on each  
5 retail package in accordance with Paragraph (c) of this Rule.

6  
7 History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;

8 Adopted Eff. April 1, 2024.



1 15A NCAC 18A .0438 is proposed for adoption as follows:

2  
3 **15A NCAC 18A .0438 INSPECTIONS AND COMPLIANCE SCHEDULE**

4 (a) If a critical deficiency is detected during an inspection of a shellfish dealer by a Division of Marine Fisheries  
5 inspector:

6 (1) the deficiency shall be corrected by the shellfish dealer during that inspection; or

7 (2) the shellfish dealer shall immediately cease production affected by the deficiency.

8 If the shellfish dealer fails to correct the deficiency during the inspection, the Division shall initiate the suspension or  
9 revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504.

10 For the purpose of this Rule, "critical deficiency" shall mean a condition or practice that results in the production of a  
11 shellfish product that is adulterated or presents a threat to the health or safety of the consumer.

12 (b) Shellfish products affected by a critical deficiency shall be controlled to prevent adulterated product from reaching  
13 consumers. The Division shall:

14 (1) embargo or destroy adulterated shellfish in accordance with 15A NCAC 18A .0429;

15 (2) initiate a recall of adulterated shellfish; and

16 (3) notify enforcement officials for the United States Food and Drug Administration, as well as shellfish  
17 control authorities in states that are known to have received adulterated shellfish.

18 (c) If a key or other deficiency is detected during an inspection of a shellfish dealer by a Division inspector, a  
19 compliance schedule shall be issued by the Division inspector that provides a time frame by which the deficiency shall  
20 be corrected by the shellfish dealer. For the purpose of this Rule, "key or other deficiency" shall mean a deficiency  
21 other than a critical deficiency.

22 (d) If a shellfish dealer fails to meet the compliance schedule, the Division shall proceed with one of the following  
23 options:

24 (1) revise the existing compliance schedule;

25 (2) initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of  
26 Compliance as set forth in 15A NCAC 03O .0504; or

27 (3) seek other administrative remedies.

28 (e) Nothing in this Rule shall be construed to limit or make null any option for remedy in accordance with Rule 15A  
29 NCAC 03O .0504 or other available administrative remedy.

30  
31 History Note: Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;

32 Adopted Eff. April 1, 2024.

1 15A NCAC 18A .0439 is proposed for adoption as follows:

2

3 **15A NCAC 18A .0439 RECALL PROCEDURE**

4 Each shellfish dealer shall adopt and adhere to a written procedure for conducting recalls of adulterated or misbranded  
5 shellfish products. This written procedure shall be based on, and complementary to, the FDA Enforcement Policy on  
6 Recalls, CFR Title 21, Chapter 1, Subchapter A., Part 7-Enforcement Policy. This procedure shall include shellfish  
7 dealers notifying the Division of Marine Fisheries and any consignee receiving affected product when a recall begins,  
8 as well as removal or correction of the affected product.

9

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

11 Adopted Eff. April 1, 2024.

1 15A NCAC 18A .0501 is proposed for readoption with substantive changes as follows:

2

3

**SECTION .0500 - OPERATION OF SHELLSTOCK PLANTS AND RESHIPPERS**

4

5 ~~Rules .0501—.0504 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A~~  
6 ~~.0501—.0504); has been transferred and recodified from Rules .1001—.1004 of Title 10 Subchapter 10B of the North~~  
7 ~~Carolina Administrative Code (T10.10B .1001—.1004), effective April 4, 1990.~~

8

9 **15A NCAC 18A .0501** ~~GENERAL REQUIREMENTS~~ FOR SHELLSTOCK PLANTS AND RESHIPPERS

10 The rules in Section .0400 and the Rules of this Section shall apply for the operation of shellstock plants and reshippers.

11

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

13 Eff. February 1, ~~1987~~.1987;

14 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0502 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0502 GRADING SHELLSTOCK AND COMMINGLING**

4 (a) For the purpose of this Rule:

5 (1) "commingling" shall mean the act of combining different lots of shellfish harvested on different  
6 days in the same growing area or combining different lots of shellstock harvested from different  
7 growing areas.

8 (2) "lot" shall mean clams from one day's harvest, from a single growing area, harvested by one or more  
9 harvesters.

10 ~~(a)~~(b) The grading of shellstock by a shellfish dealer shall be conducted only in a permitted shellstock plant.

11 ~~(b)~~(c) A ~~separate~~ grading room or area separate from other processing operations shall be required for the grading of  
12 shellstock.

13 (d) The grader used to grade shellstock, and any other accessories or tables used in the grading operation, shall be  
14 constructed to be easily cleanable and shall be kept in good repair.

15 (e) Shellfish dealers shall not commingle any shellfish, except for clams with prior approval of a commingling plan  
16 by the Division of Marine Fisheries. A commingling plan shall be approved by the Division based on limiting the  
17 dates of harvest and growing areas and maintaining lot identity so that each individual lot of shellfish can be traced  
18 back to its harvest source.

19

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

21 *Eff. February 1, ~~1987~~1987;*

22 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0503 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0503 GRADER**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. February 1, ~~1987~~1987;*

7 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0504 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0504 RESHIPPERS**

4 ~~(a) Reshippers shall meet all applicable requirements for shellstock plants. When shucked shellfish are reshipped,~~  
5 ~~they shall be obtained from a permitted shipper. The shucked shellfish shall be received in approved shipping~~  
6 ~~containers at a temperature of 40°F (4°C) or below. The temperature of the shellfish shall not exceed 40°F (4°C)~~  
7 ~~during the holding and shipping periods.~~

8 ~~(b) Reshippers shall keep adequate and accurate records indicating the source from which shellfish were purchased,~~  
9 ~~the date purchased, the name of the waters from which the shellfish were harvested, and the names and addresses of~~  
10 ~~persons to whom the shellfish were sold for a period of one year.~~

11 Reshippers shall only purchase shellfish from other shellfish dealers and sell the product to other shellfish dealers,  
12 wholesalers, or retailers without repacking or relabeling.

13

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

15 *Eff. February 1, 1987;*

16 *Amended Eff. September 1, ~~1990~~1990;*

17 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0601 is proposed for re adoption with substantive changes as follows:  
2

3 **SECTION .0600 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND**  
4 **REPACKING PLANTS**  
5

6 ~~Rules .0601—.0619 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A~~  
7 ~~.0601—.0619); has been transferred and recodified from Rules .1101—.1119 of Title 10 Subchapter 10B of the North~~  
8 ~~Carolina Administrative Code (T10.10B .1101—.1119), effective April 4, 1990.~~  
9

10 **15A NCAC 18A .0601 ~~GENERAL REQUIREMENTS~~ FOR SHUCKING AND PACKING PLANTS AND**  
11 **REPACKING PLANTS**

12 The rules in Section .0400 and the Rules of this Section shall apply for the operation of shucking and packing plants  
13 and repacking plants.  
14

15 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;  
16 Eff. February 1, 1987-1987;  
17 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0602 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0602 SEPARATION OF OPERATIONS**

4 A shucking and packing plant shall provide separate ~~rooms~~ areas for shellstock storage, shucking, heat shock, and  
5 general storage. A ~~separate packing area with delivery shelf~~ that is separate from other processing areas and with a  
6 delivery window or shelf as set forth in Rule .0605 of this Section shall be required.

7

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

9 *Eff. February 1, ~~1987-1987;~~*

10 *Readopted Eff. April 1, 2024.*



1 15A NCAC 18A .0603 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0603 HOT WATER SYSTEM**

4 An automatically regulated hot water system shall be provided ~~which~~that has ~~sufficient~~ capacity to furnish water at a  
5 temperature of at least 130°F (~~54°C~~) during all hours of shucking and packing plant operation.

6

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

8 *Eff. February 1, ~~1987-1987;~~*

9 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0604 is proposed for repeal through readoption as follows:

2

3 ~~15A NCAC 18A .0604 — HANDWASHING FACILITIES~~

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. February 1, ~~1987~~1987;*

7 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0605 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0605 DELIVERY WINDOW OR SHELF**

4 (a) A delivery window or a non-corrosive shelf shall be installed in the partition between the shucking room area and  
5 packing area. No shuckers or unauthorized personnel shall be allowed in the packing room or area. The  
6 If a delivery window is used it shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other  
7 impervious material approved by the Division for such purpose, and shall be sloped to drain towards the shucking  
8 room area.

9 (b) No shuckers or individuals that are not designated as packers by the owner or responsible individual shall be  
10 allowed in the packing area.

11

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

13 *Eff. February 1, ~~1987~~1987;*

14 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0606 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0606 NON-FOOD CONTACT SURFACES**

4 All non-food contact surfaces of equipment such as cabinets and shelving shall be ~~non-absorbent, impervious~~ and  
5 constructed to be easily ~~cleaned~~ cleanable.

6

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

8 *Eff. February 1, ~~1987-1987;~~*

9 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0607 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0607 SHUCKING BENCHES**

4 Shucking benches, tables, and contiguous walls to a height of at least two feet above the bench top, shall be of smooth  
5 concrete, non-corrosive metal, or other durable ~~non-absorbent~~ impervious material, free from cracks and pits, and ~~so~~  
6 constructed so that drainage is complete and rapid and is directed away from the stored shellfish. Shucking blocks  
7 shall be solid, one-piece construction, removable, and easily cleanable. The stands, ~~stalls~~ stalls, and stools shall be of  
8 smooth material and shall be painted with a ~~light-colored~~ light-colored washable paint, such as white in color,  
9 so that unclean surfaces can be detected.

10

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

12 *Eff. February 1, ~~1987~~ 1987;*

13 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0608 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0608 EQUIPMENT CONSTRUCTION**

4 (a) All pails, skimmers, measures, tanks, tubs, blowers, paddles, and other equipment, ~~which that~~ come into contact  
5 with shucked shellfish or with ice used for direct cooling of shellfish, shall be made of smooth, non-corrosive,  
6 impervious materials and constructed so as to be easily cleanable and shall be kept clean and in good repair.

7 (b) All equipment, including external and internal blower lines and hoses below a point two inches above the overflow  
8 level of the tank and blower drain valves, shall be constructed as to be easily ~~cleanable;~~ cleanable and there shall be  
9 no V-type threads in the food-product zone of the blower.

10 (c) The blower and skimmer drain shall not be directly connected with the sewer. There shall be an air ~~gap,~~ approved  
11 ~~by the Division,~~ gap between the blower and skimmer outlets. A floor drain shall be provided.

12 (d) Air-pump intakes shall be located in a place protected from dirt and other contamination, and shall be equipped  
13 with filters.

14

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

16 *Eff. February 1, 1987;*

17 *Amended Eff. September 1, ~~1990, 1990;~~*

18 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0609 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0609 SANITIZING EQUIPMENT**

4 Washing and sanitizing facilities, including a three-compartment wash sink of adequate size to wash the largest  
5 utensils used in the ~~plant-shucking and packing plant~~, shall be provided in a section of the plant ~~convenient to so that~~  
6 it can service the work areas. The sink shall be kept in good repair. Permanent hot and cold water connections, with  
7 combination supply faucets, shall be installed so that all vats may receive hot and cold water. Either steam, hot water,  
8 or a sanitizing solution shall be used to sanitize utensils and equipment.

9

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

11 *Eff. February 1, 1987;*

12 *Amended Eff. December 1, ~~1987~~1987;*

13 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0610 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 18A .0610 EQUIPMENT SANITATION**

4 All utensils and tools, such as opening knives, shucking pails, measures, skimmers, colanders, tanks, tubs, paddles,  
5 and containers ~~which that~~ come in contact with ~~the~~ shellfish shall be thoroughly cleaned and then ~~sanitized~~:sanitized  
6 by:

- 7 (1) ~~by~~ steam in a steam chamber or box equipped with an indicating thermometer located in the coldest  
8 zone, by exposure to a temperature of 170°F (~~76°C~~) for at least 15 minutes, or to a temperature of  
9 200°F (~~93°C~~) for at least five minutes;
- 10 (2) ~~by~~ immersion in hot water at a temperature of 170°F (~~76°C~~) for at least two ~~minutes (a thermometer~~  
11 ~~is required)~~:minutes;
- 12 (3) ~~by~~ immersion for at least one minute in, or exposure for at least one minute ~~to,~~ to a constant flow ~~of~~  
13 of a solution containing not less than 100 parts per million chlorine residual. Utensils and equipment  
14 ~~which have to that must~~ be washed in place ~~will shall~~ require washing, rinsing, and sanitizing; or
- 15 (4) ~~by a bactericidal treatment method which will provide equivalent sanitization to that provided by~~  
16 ~~the methods authorized in (1), (2), or (3), as determined by the Division. If the bactericidal~~  
17 ~~immersion or spray treatment is employed, testing kits shall be used to ensure that minimum solution~~  
18 ~~strengths are maintained throughout the cleaning process.~~other equivalent products and procedures  
19 approved in 21 CFR 178.1010, which is incorporated by reference, including subsequent  
20 amendments and editions. A copy of the reference material can be found at  
21 [https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-178/subpart-B/section-](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-178/subpart-B/section-178.1010)  
22 178.1010, at no cost.

23 A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed  
24 strengths.

25  
26 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;  
27 Eff. February 1, 1987-1987;  
28 Readopted Eff. April 1, 2024.



1 15A NCAC 18A .0611 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0611 EQUIPMENT STORAGE**

4 Equipment and utensils ~~which that~~ have been cleaned and ~~given bactericidal treatment~~ sanitized shall be stored in a  
5 manner to protect against prevent contamination.

6

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

8 *Eff. February 1, ~~1987-1987;~~*

9 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0612 is proposed for re adoption with substantive changes as follows:

2

3 **15A NCAC 18A .0612 ICE**

4 (a) Ice shall be obtained from a water supply approved by the Division of Marine Fisheries pursuant to Rule .0413 of  
5 this Subchapter and shall be stored and handled in a ~~sanitary manner~~ manner to prevent contamination and keep the  
6 ice clean.

7 (b) All equipment used in the handling of ice shall be used for no other purpose and shall be cleaned and sanitized at  
8 least once each day the facility is in operation.

9

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

11 *Eff. February 1, ~~1987~~1987;*

12 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0613 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0613 SHELLFISH SHUCKING**

4 (a) Shellfish shall be shucked in a manner ~~that they are not subject to adulteration to prevent contamination.~~ Shellstock  
5 shall be ~~reasonably~~ free of ~~mud when excessive sediment prior to being~~ shucked. Only live shellstock shall be shucked.

6 (b) Shucking of shellstock shall only be permitted on ~~approved~~ shucking tables or ~~benches.~~ benches in accordance  
7 with Rules .0402 and .0607 of this Subchapter. Floors ~~used by shuckers~~ shall not be used for the storage of shellfish  
8 or the retention of shucking pails or other food contact containers.

9 (c) When shellstock are stored in the shucking room, protection shall be provided for the storage space to prevent  
10 ~~possible adulteration the shellstock from becoming adulterated~~ from wash water wastes and from the feet of the  
11 employees.

12 (d) Shucking pails shall be placed so as to exclude the drippings from shells and from the hands of shuckers. The  
13 pails shall be rinsed with running tap water before each filling.

14 (e) Shucked ~~shellfish, when washed,~~ shellfish shall be ~~thoroughly~~ washed on a skimmer or a container approved by  
15 the Division of Marine Fisheries with cold running water from a source ~~approved by the Division under in accordance~~  
16 with Rule .0413 of this Subchapter.

17 (f) The return of excess shucked shellfish from the packing room shall not be allowed. All shucked shellfish shall be  
18 packed before ~~leaving it leaves~~ the packing room.

19 (g) If blowers are used for cleansing, the total time that shellfish are in contact with water after leaving the shucker,  
20 including the time of washing, rinsing, and any other contact with ~~water-water,~~ shall not be more than 30 minutes. In  
21 computing the time of contact with water, the length of time that shellfish are in contact with water that is ~~agitated,~~  
22 agitated shall be calculated at twice ~~its the actual length-~~ length of time that the shellfish are in contact with the water.  
23 Before packing into containers for shipment or delivery for consumption, the shellfish shall be ~~drained and packed~~  
24 drained. Shellfish shall be packed without any added substance.

25 (h) ~~Pre-cooling of shucked shellfish shall be done in equipment which meets National Sanitation Foundation standards~~  
26 ~~or the equivalent.~~

27

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

29 *Eff. February 1, 1987;*

30 *Amended Eff. September 1, ~~1990.~~1990;*

31 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0614 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0614 CONTAINERS**

4 (a) Containers used for transporting shucked shellfish shall be made from ~~food safe materials approved by the United~~  
5 ~~States Food and Drug Administration,~~food-safe materials. These containers shall not be reused for packing shellfish.

6 (b) ~~Shucked shellfish shall be packed and shipped in containers, sealed so that tampering can be detected. Each~~  
7 ~~individual container shall have permanently recorded container, so as to be conspicuous, the shuckerpacker's,~~  
8 ~~repacker's, or distributor's name and address, and the shuckerpacker's or repacker's certification number.~~The shucker-  
9 packer's or repacker's name and address and certification number shall be permanently and visibly recorded on the  
10 label of each container used for shucked shellfish.

11 (c) Any container of shucked shellfish ~~which that~~ has a capacity of 64 fluid ounces or more shall ~~be dated as of the~~  
12 ~~date shucked~~include the words "DATE SHUCKED" followed by the date shucked permanently recorded on both the  
13 lid and sidewall or bottom.bottom of the container. The date shall consist of either the abbreviation for the month and  
14 number of the day of the month or the Julian format (YDDD), the last digit of the four-digit year and the three-digit  
15 number corresponding to the day of the year.

16 (d) Any container of shucked shellfish ~~which that~~ has a capacity of less than 64 fluid ounces shall ~~indicate a SELL~~  
17 ~~BY date~~include the words "SELL BY" or "BEST IF USED BY" followed by a date when the product will reach the  
18 end of its projected shelf life. The date shall consist of the abbreviation for the month and number of the day of the  
19 month.

20 (e) For fresh frozen shellfish, the year shall be added to the date for non-Julian format. If fresh frozen, the container  
21 shall be labeled as frozen in equal size type immediately adjacent to the type of shellfish. If a frozen container of  
22 shucked shellfish is thawed and repacked, the container shall be labeled as previously frozen.

23 (f) Each container of shucked shellfish shall include a consumer advisory. The following statement, or an equivalent  
24 statement, shall be included on all containers: "Consuming raw or undercooked meats, poultry, seafood, shellfish, or  
25 eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

26 ~~(d)(g)~~ No person shall use containers bearing a certification number other than the number assigned to ~~him~~him or  
27 her.

28

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

30 Eff. February 1, 1987;

31 Amended Eff. August 1, 1998; February 1, 1997; December 1, 1987-1987;

32 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0615 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 18A .0615 SHELLFISH COOLING**

4 ~~Shucked shellfish shall be cooled to an internal temperature of 45°F (7°C) or less within two hours after delivery to~~  
5 ~~the packing room. Storage temperatures shall be 40° F (4° C) or below. No ice or other foreign substance shall be~~  
6 ~~allowed to come into contact with the shellfish after processing has been completed.~~

7 (a) For shellstock that has not been refrigerated prior to processing, shucked meats and in-shell product shall be chilled  
8 to an internal temperature of 45°F or less within three hours of shucking or processing.

9 (b) For shellstock that has been refrigerated prior to processing, shucked meats and in-shell product shall be chilled  
10 to an internal temperature of 45°F or less within four hours after removal from refrigeration.

11 (c) If heat shock is used, once shellstock is shucked, the shucked shellfish meats shall be cooled to an internal  
12 temperature of 45°F or less within two hours from the time of heat shock.

13 (d) Shucked and packed shellfish shall be stored in covered containers at an ambient temperature of 45°F or less or  
14 covered in ice.

15

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

17 *Eff. February 1, 1987;*

18 *Amended Eff. April 1, ~~1997-1997;~~*

19 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0616 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0616 SHELLFISH FREEZING**

4 (a) If shellfish are to be frozen, they shall be frozen within three days of shucking and ~~packing and the shucked date~~  
5 ~~shall be preceded by the letter (F),~~ packing. Containers of frozen shellfish shall be labeled in accordance with Rule  
6 .0614 of this Section.

7 (b) A temperature of ~~0° F (-18° C)~~ 0° F or less shall be maintained in the frozen storage rooms.

8

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

10 *Eff. February 1, 1987;*

11 *Amended Eff. April 1, 1997; December 1, ~~1987-1987;~~*

12 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0617 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0617 SHIPPING**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. February 1, 1987;*

7 *Amended Eff. April 1, ~~1997-1997~~;*

8 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0618 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0618 HEAT SHOCK METHOD OF PREPARATION OF SHELLFISH**

4 (a) ~~Facilities.~~—If a shucking and packing plant uses the heat shock process, it shall be done in a separate room adjacent  
5 to the shellstock storage room and the shucking room.

6 (b) ~~Tank construction.~~—The heat shock tank shall be constructed of smooth, non-corrosive metal, designed to drain  
7 ~~quickly and completely and to be easily and thoroughly cleaned.~~ cleanable.

8 (c) ~~Booster heaters.~~—All heat shock tanks shall be equipped with booster heaters that are thermostatically controlled.

9 (d) ~~Shellstock washing.~~—All shellstock subjected to the heat shock process shall be ~~thoroughly~~ washed with flowing  
10 potable water immediately prior to the heat shock operation.

11 (e) ~~Water temperature.~~—During the heat shock process the water shall be maintained at not less than 140°F (60°C) or  
12 more than ~~150°F (65°C).~~ 150°F. An accurate thermometer shall be available and used to determine the temperature  
13 during the heat shock process. ~~The heat shock tanks shall be drained and cleaned at the end of each day's operation.~~

14 (f) ~~Alternatives to heat shock method.~~—Nothing in ~~these Rules~~ this Rule shall be construed to prohibit any other  
15 process ~~which that~~ has been found by the Division of Marine Fisheries to be equally effective.

16 (g) ~~Water requirements.~~—At least eight gallons of heat shock water shall be maintained in the tank for each ~~one-half~~  
17 one-half bushel of shellstock being treated. All water used in the heat shock process shall be from a source approved  
18 by the Division ~~under in accordance with~~ Rule .0413 of this Subchapter.

19 (h) ~~Cooling.~~—Immediately after the heat shock process, all treated shellstock shall be subjected to a cool-down with  
20 flowing potable ~~tap~~ water. All ~~heat-shocked~~ heat-shocked shellstock shall be handled in a manner to prevent  
21 ~~adulteration of the product.~~ the product from becoming adulterated. Shellfish ~~which that~~ have been subjected to the  
22 heat shock process shall be cooled to an internal temperature of 45°F (7°C) or below within two hours after this process  
23 and shall be placed in storage at ~~40°F (4°C)~~ 45°F or below.

24 (i) ~~Cleaning.~~—At the close of each day's operation, the heat shock tank shall be completely emptied of all water, mud,  
25 and detritus, and ~~thoroughly~~ cleaned and then rinsed with flowing potable water.

26 (j) ~~Sanitizing.~~—All heat shock tanks shall be sanitized immediately before starting each day's operation.

27 (k) The procedure for the heat shock process shall be posted in a location that can be viewed by employees to help  
28 ensure the correct procedure can be followed.

29

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

31 Eff. February 1, 1987;

32 Amended Eff. August 1, 2002; August 1, 1998; February 1, 1997; September 1, 1990-1990;

33 Readopted Eff. April 1, 2024.



1 15A NCAC 18A .0619 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0619 REPACKING OF SHELLFISH**

4 (a) If repacking is practiced, it shall be ~~done strictly conducted~~ in accordance with all the requirements ~~stipulated~~ for  
5 shucking and packing plants in the Rules of this Section except ~~those for requirements~~ related to shucking.

6 (b) The shucked shellfish to be repacked shall be received at the repacking plant ~~in approved shipping containers~~ at a  
7 temperature of ~~32°-40°F (0°-4°C)~~ 45°F or less.

8 (c) Shellfish shall not be repacked more than one time.

9 (d) The temperature of the shellfish shall not exceed an internal temperature of 45°F (7°C) ~~for more than two hours~~  
10 during the repacking process.

11 ~~Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL~~  
12 ~~BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are~~  
13 ~~repacked shall be dated to show the original shucking date and repacking date, which will be preceded by the letter~~  
14 ~~(R).~~ Containers of repacked shellfish shall be repacked and labeled in accordance with Rule .0614 of this Section,  
15 except that the original date of shucking shall be added to the new repacked container or the original date of shucking  
16 shall be used in establishing the "SELL BY" or "BEST IF USED BY" date.

17 (f) Repackers shall keep ~~accurate~~ records indicating the source from which shellfish were purchased, the date packed,  
18 the date of purchase, ~~the area within the state or territory from which the shellfish were harvested,~~ and the names and  
19 addresses of ~~persons~~ shellfish dealers to whom ~~the~~ shellfish were sold.

20

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

22 *Eff. February 1, 1987;*

23 *Amended Eff. December 1, ~~1987~~ 1987;*

24 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0620 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 18A .0620 SHELLFISH THAWING AND REPACKING**

4 (a) Frozen shellfish shall be thawed ~~under temperatures not to exceed 45° F (7° C)~~ at a temperature of 45°F or less.

5 (b) Shellfish held for thawing shall be separated from other shellfish.

6 (c) Thawed shellfish shall not exceed ~~45° F (7° C)~~ 45°F for more than two hours during the repacking process.

7 (d) Containers of repacked, thawed shellfish shall be labeled as required in Rule .0619 of this Section and shall also  
8 be labeled as "PREVIOUSLY FROZEN", or equivalent.

9 (e) Thawed ~~shellfish, which shellfish that~~ shellfish that remain in original containers, containers shall be labeled as required in Rule  
10 .0614 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.

11

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

13 *Eff. April 1, ~~1997-1997;~~*

14 *Readopted Eff. April 1, 2024.*

1 15A NCAC 18A .0621 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0621 RECALL PROCEDURE**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. August 1, ~~1998~~1998;*

7 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0701 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0700 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES**

4  
5 ~~Rules .0701—.0713 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A~~  
6 ~~.0701—.0713); has been transferred and recodified from Rules .1201—.1213 of Title 10 Subchapter 10B of the North~~  
7 ~~Carolina Administrative Code (T10.10B .1201—.1213), effective April 4, 1990.~~

8  
9 **15A NCAC 18A .0701 ~~GENERAL REQUIREMENTS~~ FOR DEPURATION**

10 ~~(a) The Rules in Section .0400 shall apply for the operation of depuration facilities.~~ In addition to and to the extent  
11 not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission rules, requirements  
12 for depuration shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP)  
13 Guide for the Control of Molluscan Shellfish chapter titled "Depuration", which is incorporated by reference, not  
14 including subsequent amendments and editions. A copy of the reference material is available online at:  
15 <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

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

20 (c) If there is an immediate or ongoing critical need for a method for the analysis of depuration process water and  
21 shellfish that are used to evaluate the effectiveness of the depuration process and no method approved for use within  
22 the NSSP exists, the following may be used:

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

27  
28 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;  
29 Eff. February 1, 1987-1987;  
30 Readopted Eff. April 1, 2024.

1 15A NCAC 18A .0702 - .0703 are proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0702 FACILITY SUPERVISION**

4 **15A NCAC 18A .0703 FACILITY DESIGN AND SANITATION**

5

6 *History Note: Authority G.S. 130A-230;*

7 *Eff. February 1, ~~1987~~1987;*

8 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0704 is proposed for repeal as follows:

2

3 **15A NCAC 18A .0704 LABORATORY PROCEDURES**

4

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

6 *Eff. February 1, 1987;*

7 *Amended Eff. September 1, 1991; September 1, 1990;*

8 *Readopted Eff. May 1, ~~2021-2021~~;*

9 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0705 - .0713 are proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0705 FACILITY OPERATIONS**

4 **15A NCAC 18A .0706 SHELLFISH SAMPLING PROCEDURES**

5 **15A NCAC 18A .0707 DEPURATION PROCESS WATER CONTROL - SAMPLING PROCEDURES**

6 **15A NCAC 18A .0708 DEPURATION TREATMENT PROCESS WATER - STANDARDS**

7 **15A NCAC 18A .0709 DEPURATION - SHELLFISH MEAT STANDARDS**

8 **15A NCAC 18A .0710 ULTRAVIOLET UNIT**

9 **15A NCAC 18A .0711 SHELLSTOCK STORAGE**

10 **15A NCAC 18A .0712 DEPURATION - TAGGING AND RELEASE OF SHELLFISH**

11 **15A NCAC 18A .0713 DEPURATION - RECORDS**

12

13 *History Note: Authority G.S. 130A-230;*

14 *Eff. February 1, 1987;*

15 *Amended Eff. September 1, 1990(Rules .0705, .0706); December 1, ~~1987-1987~~(Rule .0705);*

16 *Repealed Eff. April 1, 2024.*

1 15A NCAC 18A .0801 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0800 - WET STORAGE OF SHELLSTOCK**

4  
5 ~~Rules .0801—.0806 of Title 15A Subchapter 10B of the North Carolina Administrative Code (T15A.10B~~  
6 ~~.0801—.0806); has been transferred and recodified from Rules .1301—.1306 of Title 10 Subchapter 10B of the North~~  
7 ~~Carolina Administrative Code (T10.10B .1301—.1306), effective April 4, 1990.~~

8  
9 **15A NCAC 18A .0801 ~~GENERAL REQUIREMENTS~~ GENERAL REQUIREMENTS FOR WET STORAGE OF SHELLSTOCK**

10 ~~The rules in Section .0400 shall apply for wet storage of shellstock.~~ (a) In addition to and to the extent not inconsistent  
11 with other applicable provisions of North Carolina Marine Fisheries Commission Rules, requirements for wet storage  
12 shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the  
13 Control of Molluscan Shellfish (hereinafter referred to as "Model Ordinance") chapter titled "Wet Storage in Approved  
14 and Conditionally Approved Growing Areas", which is incorporated by reference except as provided in Paragraph (b)  
15 of this Rule, not including subsequent amendments and editions. A copy of the reference material is available online  
16 at: <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

17 (b) Amendments and exceptions to the Model Ordinance chapter titled "Wet Storage in Approved and Conditionally  
18 Approved Growing Areas" incorporated by reference include:

19 (1) Section @.01, .04, C(1)(a) is amended to read: "Except for a water source in accordance with Rule  
20 .0413 of this Subchapter, the quality of the surface source water prior to treatment shall meet, at a  
21 minimum, the bacteriological standards for the conditionally approved classification in the open  
22 status. Water classified as prohibited or restricted shall not be used as source water."

23 (2) the following sections are not incorporated by reference and shall not apply: Sections @.01, .04,  
24 C(2)(a)(ii), @.01, .04, C(2)(b), @.01, .04, C(2)(c), and @.01, .04, C(2)(d).

25  
26 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*  
27 *Eff. February 1, ~~1987-1987;~~*  
28 *Readopted Eff. April 1, 2024.*



1 15A NCAC 18A .0802 - .0806 are proposed for repeal through readoption as follows:

2

3 **15A NCAC 18A .0802 PLANT DESIGN: SANITATION: AND WET STORAGE**

4 **15A NCAC 18A .0803 WET STORAGE WATER**

5 **15A NCAC 18A .0804 SHELLSTOCK CLEANING**

6 **15A NCAC 18A .0805 WET STORAGE TANKS**

7 **15A NCAC 18A .0806 SHELLSTOCK CONTAINERS**

8

9 *History Note: Authority G.S. 130A-230;*

10 *Eff. February 1, ~~1987~~1987;*

11 *Repealed Eff. April 1, 2024.*

**Fiscal Impact Analysis of Proposed Amendments to Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources Rule Package**

**Rule Amendments:** 15A NCAC 03I .0113 Data Collection  
15A NCAC 03O .0101 Procedures and Requirements to Obtain Licenses, Endorsements, and Commercial Fishing Vessel Registrations  
15A NCAC 03O .0109 Assignment of Standard Commercial Fishing License  
15A NCAC 03O .0112 For-Hire License Requirements  
15A NCAC 03O .0301 Eligibility and Requirements for Recreational Commercial Gear Licenses

**Name of Commission:** N.C. Marine Fisheries Commission

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

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

**Authority:**

50 CFR § 600.725. General prohibitions.

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

**Necessity:** Due to the increasing occurrence and severity of harassment and decreasing participation in Division of Marine Fisheries (DMF) data collection initiatives, amendments are proposed to several Marine Fisheries Commission (MFC) rules. The amendments add requirements to broaden and enhance protections for DMF employees from harassment that could occur in the process of obtaining data about fishing activity. The amendments also broaden

the applicability of the requirements beyond fish in the licensee's possession by including anyone engaged in these regulated activities. Proposed amendments also list the types of data that may be collected. A detailed description of the changes proposed to each affected rule follows.

## **I. Background**

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

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

In June 2022, there were two incidences in northern North Carolina where individuals associated with for-hire operations harassed MRIP samplers and interfered with data collection. The first incident involved an MRIP sampler intercepting anglers coming off for-hire vessels after their fishing trips. The MRIP sampler witnessed several mates on the for-hire vessels tell the anglers not to answer any of the sampler's questions, and the anglers refused to participate in the survey or provide biological samples. The second incident involved a female MRIP sampler trying to intercept anglers at the same location as the previous incident. When the MRIP sampler attempted to collect biological samples from the fish caught on the trip, the captain made an explicit statement with a sexual connotation while he was video recording her with his phone. The MRIP sampler left the site immediately and was unable to collect any biological samples or survey data. Although these incidents were reported to DMF's Marine Patrol, it was determined that the requirement for participation in biological sampling found in MFC Rule 15A NCAC 03I .0113 could only be enforced with license holders. Because the anglers were allowed to fish under the charter business's Blanket For-Hire Vessel Coastal Recreational Fishing License

(CRFL), they did not hold a license and, therefore, could not be held to the requirements of the rule. It was also determined by Marine Patrol that there were no enforceable requirements that would protect DMF employees from harassment or offensive actions.

For-hire data have become increasingly important as for-hire license sales have steadily increased in recent years. As these new participants enter the recreational for-hire fleet, they may not be familiar with standard DMF sampling events and data collection processes, leading to decreased participation in the MRIP survey. To address this, DMF employees have engaged in additional outreach efforts with the recreational for-hire industry. For example, DMF held two in-person outreach events in October 2022 in the northern area of the state. DMF employees were available to discuss the MRIP and provide an open platform so that for-hire guides and the public could ask questions and learn more about DMF and its data collection initiatives. These meetings served as a way for DMF to connect with its stakeholders on current topics and obtain feedback on how DMF can better collaborate with the for-hire industry in future endeavors. Participants commented that the outreach meetings were beneficial to both parties and should continue to occur.

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

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

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

and

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

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

*“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples, which shall include refusal or failure to provide information on fishing gear parameters or to provide any captured finfish or sea turtle to division staff. 15A NCAC 03O.0502(1)”*

and

*“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o), (t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, and coercion of observers.”*

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

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

The above examples highlight the need for a long-term solution to protect all DMF employees from harassment in all its forms, regardless of the type of fishing activity, not just by holders of a license or permit. Related, is the need for fishers to provide data, information, and samples so that the DMF can properly manage fisheries in compliance with state and federal laws and meet the requirements of Endangered Species Act Section 10 Incidental Take Permits. These data, information, and samples needed are broader than questions about or samples from fish that are

in possession of the licensee under the current requirements of 15A NCAC 03I .0113. A long-term solution is to amend this rule to explicitly require licensees, and any person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes, to provide the data, information, and samples upon request, and to explicitly prohibit harassment consistent with federal regulations. Table 1 provides a summary of recent actions and the results of those actions leading to proposed rule changes.

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

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

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

protections have numerous additional benefits. A workplace free from unlawful harassment typically leads to higher employee satisfaction, lower turnover, and better recruitment.

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

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

## **II. Purpose of Rule Change**

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

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

Proposed amendments to 15A NCAC 03I .0113 would set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments would provide the types of data that may be collected. The amendments would support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees.

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

Proposed language to be added to 15A NCAC 03I .0113 to protect DMF employees collecting data is adapted from requirements about harassment to protect federal samplers identified in the CFR (50 CFR § 600.725(o), (t), and (u)). While the CFR applies broadly to "any person," the proposed rule change would apply to licensees, permittees, and those engaged in regulated activity (e.g., fishing). Subchapter IV of Chapter 113 is the "Conservation of Marine and Estuarine and Wildlife Resources". These laws set requirements for the conservation of marine and estuarine resources. There are currently individuals that participate in taking these resources that are not required to hold a permit or license but, per G.S. 113-181, are included in the Department of Environmental Quality's duty to collect data in support of the conservation of marine and estuarine resources. Examples include individuals fishing under a blanket license, such as the Ocean Fishing Pier License or one of the for-hire blanket licenses, as well as mates or other employees working in a for-hire operation that are not permitted or licensed. Proposed changes to 15A NCAC 03I .0113 and the other supporting rules in the fiscal analysis expand the scope of the rules to match the data collection authority per G.S. 113-181.

The proposed amendments to the rule would provide the ability to prosecute offenders, regardless of whether they hold a license or permit and regardless of sector. Holding all stakeholders accountable for harassment of DMF employees while they perform their job duties should contribute to reducing the number of harassment cases in the future. This requirement would also provide a sense of security to DMF employees in knowing that MFC rules can potentially deter hostile or offensive interactions while they perform their duties regardless of the setting (e.g., in the office, at a fishing dock, or on the water). The only exception to incorporation of the language from 50 CFR § 600.725(o), (t), and (u) is for "assault", which for Marine Patrol is handled under separate statutory authority.

Regarding data collection, the title of Rule 15A NCAC 03I .0113 is proposed to be changed from "Biological Sampling" to "Data Collection" because DMF collects more than just biological data from stakeholders. For example, data such as residential location and fishing effort, and social and economic data of participants are just a few data points that are collected by DMF employees that do not explicitly fall under the biological sampling umbrella but fall under the DMF's authority. Changing the title of the rule is consistent with clarifying the authority for and increasing the support to collect more overarching fisheries data to better inform fisheries



managers about the fishing activities in N.C. marine and estuarine waters for the conservation of those resources. Changes are also proposed to the body of the rule to list in detail the types of data that may be collected. The list is not intended to be exhaustive, but rather to more accurately characterize the types of data needed for DMF statistics and surveys, Endangered Species Act Section 10 Incidental Take Permit reports, and the protection of public health for programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

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

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

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

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

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

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

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

### **III. Economic Impact Summary**

The proposed rule amendments will help DMF more optimally fulfill its duties of collecting data on regulated fishing activity from all participants for the conservation of marine and estuarine resources and ensure its employees can perform their job functions in an environment that is both physically safe and free from unlawful harassment. Providing clear data collection requirements and protections for DMF employees fulfills DMF's responsibility as a management agency and an employer. Proposed changes give clarity about the data collection requirements and consequences of unlawfully harassing a DMF employee to ensure stakeholders have comprehensive requirements in rule. Though the proposed rule changes provide clear benefits to the marine and estuarine resources and DMF employees, these benefits are unquantifiable.

The proposed rule amendments may result in small costs to persons participating in regulated fishing activity in the form of time spent interacting with DMF employees participating in data collection processes. As compared to the regulatory baseline, these rule amendments will only result in new time costs to persons who would have otherwise refused to participate in data collection processes.

In addition, persons who withhold data and information from DMF employees or who harass DMF employees while they perform their job functions could incur costs in the form of fines, legal fees, and/or suspension or revocation of permits and licenses. Pursuant to G.S. 15A-1340.23, the fines could range from \$35 to \$200, not including the cost of court time, which is \$183 as of March 2023 as described in G.S. 7A-304(a). Suspension or revocation of a license occurs for conviction of a criminal offense as set forth in G.S. 113-171 and 15A NCAC 03O .0114. Suspension or revocation of a permit occurs for violation of permit conditions as set forth in 15A NCAC 03O .0504. Such permit conditions can include refusal to allow the Fisheries Director or their agents to obtain biological data, harvest information, or other data necessary or useful to the conservation and management of marine and estuarine resources for the taking of fish, or harassing these agents while they perform their job functions.

There have been three documented incidents between April 2021 and March 2023 in which these types of costs could have been incurred if the proposed rule changes were already in place. DMF cannot predict how frequently these incidents will occur in the future, but DMF expects that they will continue to be relatively infrequent. These costs would be easily avoided by complying with requirements to participate in data collection.

Although not quantifiable, the costs associated with the proposed rule changes will be outweighed by the benefits to the state's marine and estuarine resources, fishery management, DMF employees, and stakeholders.

1 **APPENDIX I.**

2

3 15A NCAC 03I .0113 is proposed for amendment as follows:

4

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

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

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

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

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

31 (d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents  
32 in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment  
33 or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o),  
34 (t), and (u), including to:

- 35 (1) harass;
- 36 (2) sexually harass, including making sexual connotations;
- 37 (3) oppose;

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

8 50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including

9 subsequent amendments and editions. A copy of the reference material can be found at

10 <https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>, at no cost.

11 (e) Exceptions to 50 CFR 600.725(t) include "assault".

12

13 *History Note: Authority G.S. 113-134; 113-170.3; 113-174.1; 113-181; 113-182; 113-221.2; 143B-289.52;*

14 *Eff. October 1, 1992;*

15 *Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;*

16 *Readopted Eff. March 15, ~~2023~~ 2023;*

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

1 15A NCAC 03O .0101 is proposed for amendment as follows:  
2

3 **SUBCHAPTER 03O - LICENSES, LEASES, FRANCHISES, AND PERMITS**  
4

5 **SECTION .0100 - LICENSES**  
6

7 **15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES,**  
8 **ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

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

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

14 (c) To obtain Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, a  
15 licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted  
16 without complete and required information shall not be processed until all required information has been submitted.  
17 Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following  
18 shall be required for the application:

- 19 (1) full name, physical address, mailing address, date of birth, and signature of the licensee. If the  
20 licensee is not appearing before a license agent or a representative of the Division, the licensee's  
21 signature shall be notarized.
- 22 (2) a statement from the licensee that the information and supporting documentation submitted with the  
23 application is true and correct.
- 24 (3) current and valid picture identification of the licensee. Acceptable forms of picture identification  
25 are state driver's license, state identification card issued by the Division of Motor Vehicles, military  
26 identification card, resident alien card (green card), or passport; or if purchased by mail, a copy  
27 thereof.
- 28 (4) certification that the applicant does not have four or more marine or estuarine resource convictions  
29 during the previous three years.
- 30 (5) current articles of incorporation and a current list of corporate officers when purchasing a license or  
31 Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an  
32 individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall  
33 notify the Morehead City Office of the Division within five days of changing the vessel master.
- 34 (6) a current copy of a written partnership agreement shall be provided when purchasing a license,  
35 endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is  
36 established.

1 (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a  
2 Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending,  
3 a copy of the pending application and a notarized bill of sale may be submitted.

4 (8) affirmation of liability insurance and that the operator is knowledgeable of United States Coast  
5 Guard (USCG) safety requirements for the vessels used in the operation in accordance with G.S.  
6 113-168.6 when purchasing a Commercial Fishing Vessel Registration with a for-hire endorsement.

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

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

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

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

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

20 (2) All other types of licenses:

21 (A) North Carolina voter registration card;

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

23 (C) current North Carolina Certificate of Domicile;

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

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

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

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

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

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

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

37 (3) Fish Dealer License:

- 1 (A) the physical address of the established location where business is conducted and, if
- 2 different, the address where records are kept; and
- 3 (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries
- 4 Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer
- 5 License with clam or oyster categories or a consolidated license.
- 6 (4) Land or Sell License:
- 7 (A) valid documentation papers or current motor boat registration, or copy thereof; or
- 8 (B) a copy of the pending application and a notarized bill of sale if an application for transfer
- 9 of documentation is pending.

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

- 12 (5) Ocean Fishing Pier License:
- 13 (A) the information required in G.S. 113-169.4; and
- 14 (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the
- 15 linear length of the pier before the license can be issued.
- 16 (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.
- 17 (7) Spotter Plane License:
- 18 (A) the information required in G.S. 113-171.1;
- 19 (B) the current aircraft registration; and
- 20 (C) a list of operators.

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

- 23 (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through
- 24 June 30 of the following year.
- 25 (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
- 26 (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each
- 27 year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license
- 28 years for which the person had a vessel that was licensed to land in North Carolina;
- 29 (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-
- 30 94, or 1994-95 license years; and
- 31 (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or
- 32 Sell License.
- 33 (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean
- 34 than the number of vessels that the person owns that individually met the eligibility requirements of
- 35 Parts (f)(2)(A) and (f)(2)(B) of this Rule.
- 36 (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel
- 37 specified at the time of license issuance.



1 (5) at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall  
2 specify the name of the vessel master for each License to Land Flounder from the Atlantic Ocean  
3 issued.

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

7 (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year.

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

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

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

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

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

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

25  
26 *History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182;*  
27 *143B-289.52;*

28 *Eff. January 1, 1991;*

29 *Amended Eff. July 1, 1997; March 1, 1994;*

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

31 *Amended Eff. August 1, 2000;*

32 *Temporary Amendment Eff. April 1, 2001;*

33 *Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002;*

34 *Readopted Eff. March 15, ~~2023~~2023;*

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

1 15A NCAC 03O .0109 is proposed for amendment as follows:

2

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

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

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

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

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

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

26 ~~(d)(c)~~ Assignments shall terminate:

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

33 ~~(e)(f)~~ It shall be unlawful for an individual assigned a Standard Commercial Fishing License when involved in a  
34 commercial fishing operation to fail to have the original actual Standard Commercial Fishing License, any assigned  
35 endorsements, and a copy of the assignment form in the individual's possession ready at hand for inspection in  
36 accordance with G.S. 113-168.1.

37 ~~(f)(g)~~ All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.

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

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

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

11  
12 *History Note: Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187;*  
13 *143B-289.52;*  
14 *Eff. January 1, 1991;*  
15 *Temporary Amendment Eff. October 2, 1999; July 1, 1999;*  
16 *Amended Eff. August 1, 2000;*  
17 *Readopted Eff. March 15, ~~2023~~, 2023;*  
18 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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

2

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

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

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

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

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

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

21

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

23 *Eff. July 1, 2008;*

24 *Readopted Eff. April 1, ~~2019-2019;~~*

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

1 15A NCAC 03O .0301 is proposed for amendment as follows:  
2

3 **SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES**  
4

5 **15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL**  
6 **GEAR LICENSES**

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

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

11  
12 *History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;*  
13 *Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule*  
14 *becomes effective, whichever is sooner;*  
15 *Eff. February 1, 1995;*  
16 *Temporary Amendment Eff. July 1, 1999;*  
17 *Amended Eff. August 1, 2000;*  
18 *Readopted Eff. March 15, ~~2023~~, 2023;*  
19 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

## **Fiscal Impact Analysis of Proposed Conforming Rule Changes to Oyster Sanctuary Rule**

**Rule Amendments:** 15A NCAC 03R .0117

**Name of Commission:** N.C. Marine Fisheries Commission

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

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

### **AUTHORITY**

#### N.C. General Statutes

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

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

### **I. Summary**

Marine protected areas (MPAs) are a management tool for restoration and conservation of marine species and ecosystems. Management strategies applied within MPA boundaries can vary widely, however, in most cases, management in these areas includes some degree of harvest restriction (e.g., gear type, seasonality, or total prohibition). In general, the abundance and size of individual fish within MPAs are often significantly greater and larger, respectively, than outside MPAs, which can also lead to a “spill-over effect” of larvae and individuals from inside to outside the MPA (Gell and Roberts 2002, Halpern 2003, Sobel and Dahlgren 2004). In other words, fish are generally larger and more abundant in MPAs than outside MPAs. In pursuit of

shellfish rehabilitation, the Division of Marine Fisheries (DMF) has applied the MPA model through its Oyster Sanctuary Program. This program is responsible for creating artificial reef habitat, designed to support healthy and abundant oyster populations throughout Pamlico Sound and its tributaries. Once built, a reef site is protected from harvest to preserve broodstock and is called an “oyster sanctuary.” With healthy and abundant broodstock populations inside sanctuary boundaries, these sites continue to serve their intended function by supplying oyster larvae to other reefs nearby.

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

The Blue-Ribbon Advisory Council on Oysters (BRACO) made the first recommendations concerning the establishment of oyster sanctuaries in North Carolina in 1995. The BRACO recommended the state provide selected areas where wild oyster stocks can adapt to present water quality and disease conditions without being subjected to the additional stress of habitat disturbance and oyster harvest. In addition to providing a sanctuary for oysters, these areas would also provide good nursery habitat for other finfish, shellfish, and crustacea species increasing their abundance for commercial and recreational fishing. The protected oysters would also provide increased water filtration, reducing turbidity and excess nutrients in the estuary. As part of the recommendation, oyster sanctuaries would be closed to the taking of shellfish (oysters, clams, mussels, and scallops) and to bottom disturbing activities such as trawling, long hauling, and dredging for an indefinite period (Frankenberg 1995)<sup>1</sup>.

DMF initially developed 10 oyster sanctuaries in Pamlico Sound and its tributaries. These sanctuaries were originally designated as shellfish management areas by proclamation, as authorized by Rule 15A NCAC 03K .0103. For these reef sites to serve their intended function as oyster broodstock sanctuaries, harvest protections needed to be applied. As part of the 2008 Oyster Fishery Management Plan Amendment 2, the MFC moved the protection of oyster sanctuaries from proclamation into rules 15A NCAC 03K .0209 and 03R .0117, Oyster Sanctuaries. Since 2008, DMF has expanded the Oyster Sanctuary Program by constructing

---

<sup>1</sup> Frankenberg, D. 1995. North Carolina Blue Ribbon Advisory Council on Oysters. Final Report on Studies and Recommendations. North Carolina Department of Environment, Health and Natural Resources. Raleigh, NC.

seven additional sanctuaries, using funding from the North Carolina General Assembly, The Nature Conservancy, National Oceanic and Atmospheric Administration National Estuarine Counsel, Coastal Recreational Fishing Licenses, and other mitigation sources.

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

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

## **II. Introduction and Purpose of Rule Changes**

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

### Addition of Two Recently Developed Oyster Sanctuaries

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

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

Following publication of the rulebook supplement in September 2022, DMF discovered 3 of the 13 sanctuaries (Pea Island, Raccoon Island, and Swan Island) had incorrect coordinates. Technical corrections to the rule text are required in order to match the permitted and marked boundaries of the three sanctuary sites. These changes will delineate all reef site area intended for oyster sanctuary purposes so that protections provided by Rule 15A NCAC 03K .0209 may



be accurately applied. In addition, accurately delineated boundaries will help safeguard boaters navigating the area. Coordinates for three sanctuaries are proposed for consistency to standardize the cardinal directions; there are no changes to the overall sanctuary nor the coordinate pairs.

### Summary and Implications

Historically, oyster sanctuary site selection leaned heavily on a limited understanding of oyster habitat suitability and was largely dependent upon where historic oyster reefs once existed. New strategies and techniques used for deployment, as well as new technology for physical and biological monitoring have substantially improved oyster reef enhancement success and have reduced errors. A more modern habitat suitability index (HSI) model rates areas based on salinity gradient, bottom type, tidal flow, larval transport, wave action, and prevailing wind data as well as historic oyster presence data and input from stakeholders and managers. This approach is proven to be a better method to select areas to develop as sanctuaries and accurately delineate their boundaries. A core tenet of DMF's current site selection approach is to find locations that meet the criteria of the HIS and that do not currently contain any existing shell resource. According to Rule 15A NCAC 07H .0208, the location and construction of all sanctuary reefs must not create any "significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation...and spawning and nursery areas." In short, all bottom sited for sanctuary reef construction must not contain any existing shellfish habitat or habitat suited for marine resource spawning and nursing, meaning all sanctuary bottom is unproductive prior to construction.

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

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

## VI. TABLES AND FIGURES

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

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

- Sanctuaries (1-11, 14) are under authority of rules 15A NCAC 03K .0209 and 03R .0117.
- Sanctuaries (12, 13, 15-17) are under authority of Rule 15A NCAC 03K .0103 via Proclamation SF-6-2022.
- Sanctuaries (4, 6) were removed from Rule 15A NCAC 03R .0117 effective May 1, 2021, as the sites are no longer biologically productive and were not serving their management purpose as oyster sanctuaries.

+ Boundary sizes are calculated on areas bound by delineating coordinates in 15A NCAC 03R .0117.

\* Values for Habitat Footprint and Total Material Deployed are subject to increase over time, as reef enhancement and construction are ongoing.

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

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

# Jean Preston Oyster Sanctuary Network

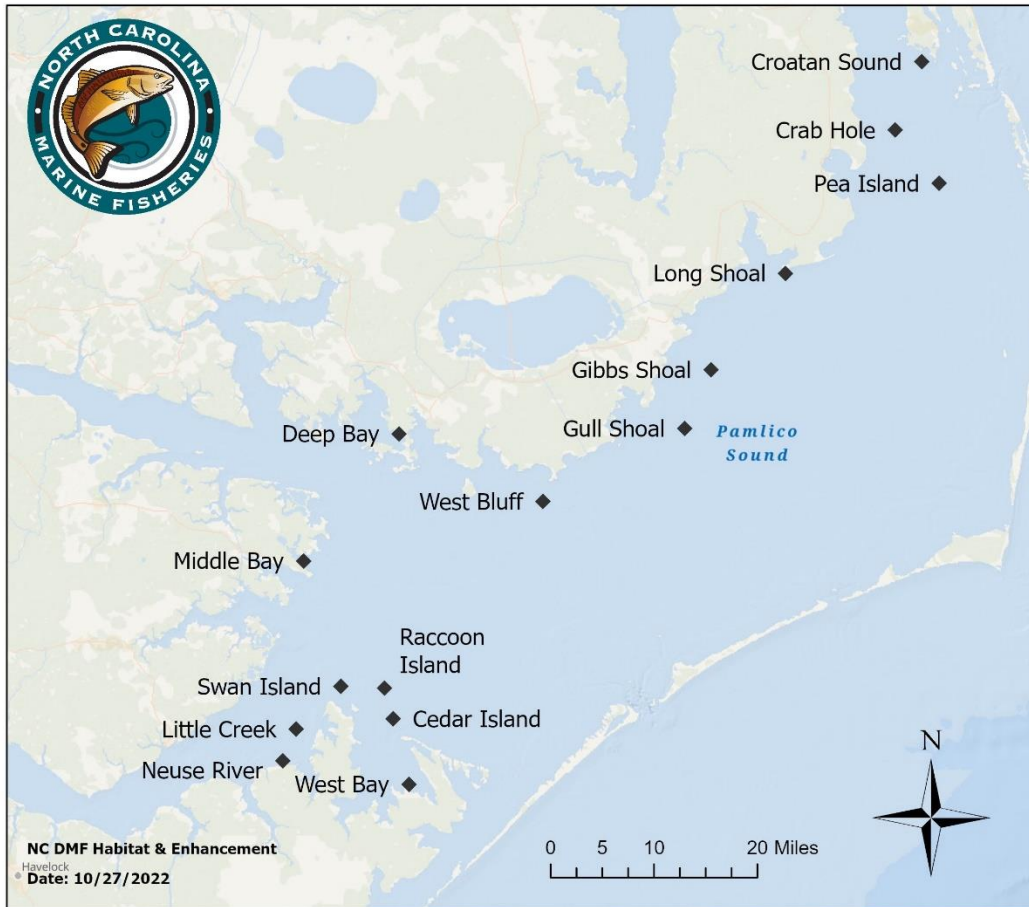


Figure 1. Oyster sanctuary locations.

# OS-16 Cedar Island

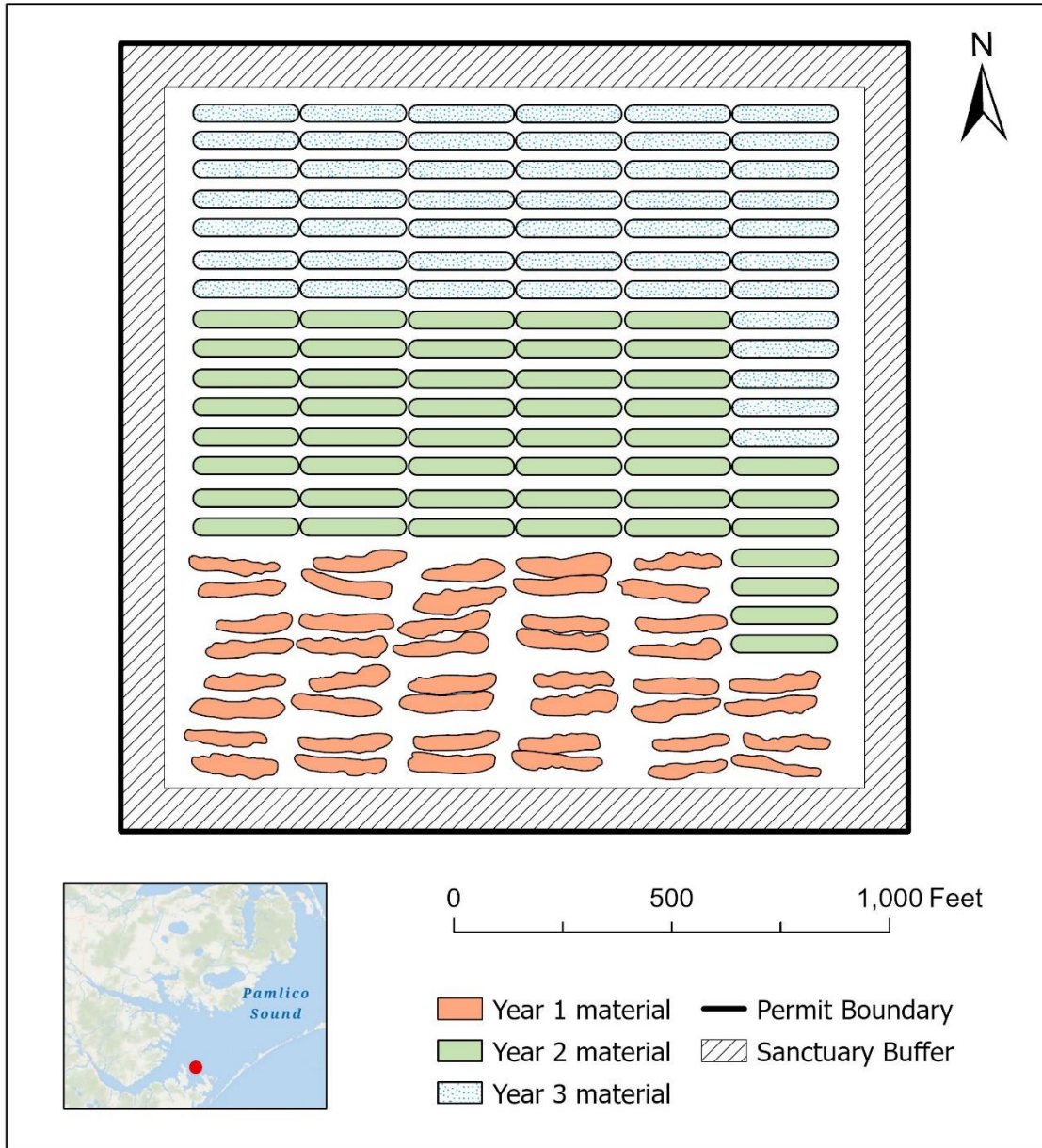
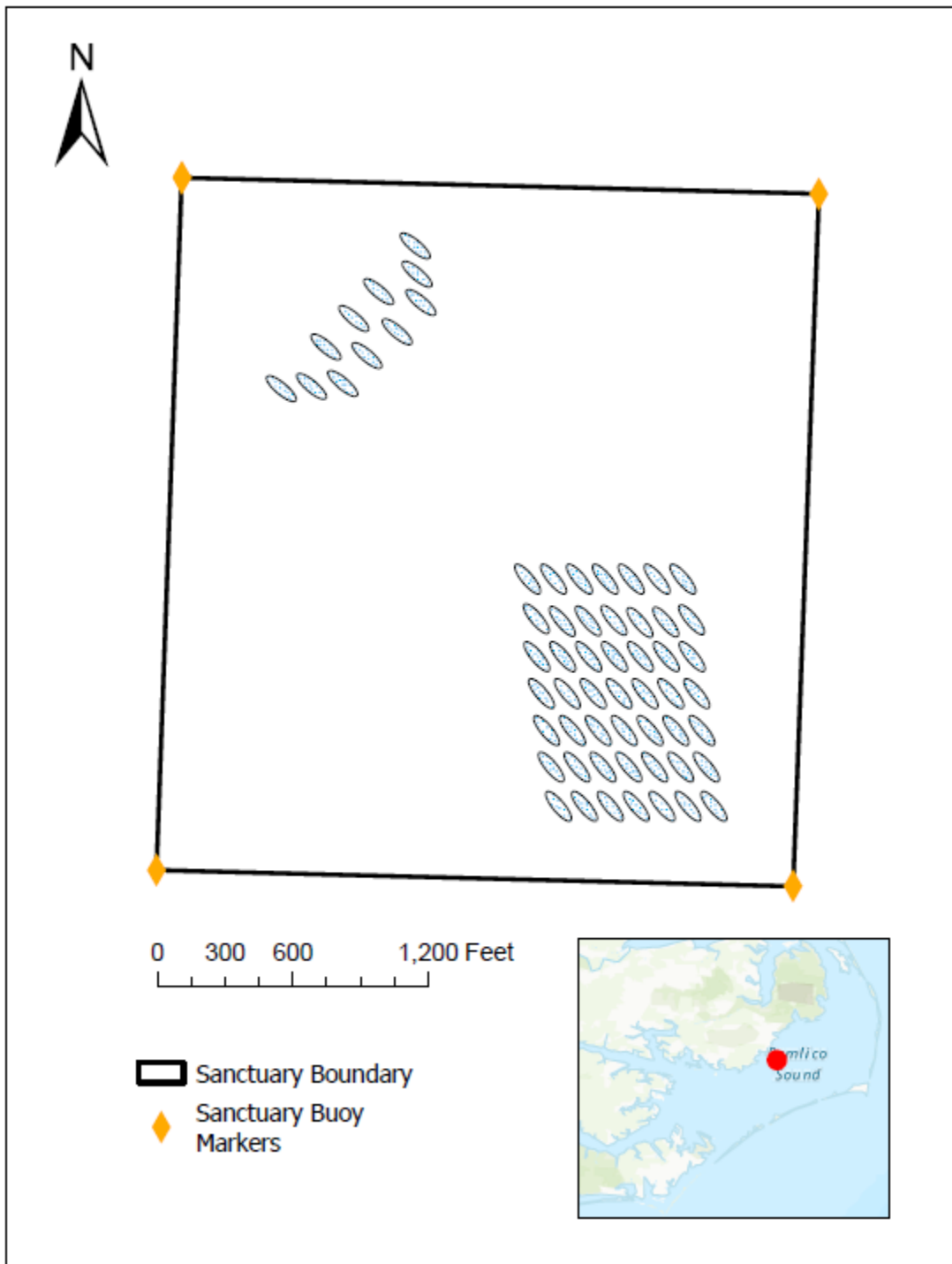


Figure 2. Cedar Island Oyster Sanctuary. With three years planned to fully develop the area, illustrated above is the footprint from the first 18,000 tons of material deployed and approximate distribution for future material (target completion summer 2023).

# OS-17 Gull Shoal



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

## **Fiscal Analysis**

Proposed rule amendments will codify in rule two oyster sanctuaries totaling 236.92 acres. Additionally, there are corrections to three oyster sanctuary boundaries which will codify in rule an additional 20.01 acres of oyster sanctuary, for a total sanctuary addition of 256.21 acres. All of these proposed changes to rule reflect the boundaries which are currently enforced through Proclamation SF-6-2022 (effective October 14, 2022). The requirements in Proclamation SF-6-2022 make it unlawful to take, or possess after taking, shellfish from the oyster sanctuary areas. Additionally, the proclamation states that it is unlawful to use trawl nets, long haul seines, or swipe nets in the designated oyster sanctuaries. The intent of these requirements is to designate oyster sanctuaries after substrate is strategically deployed and monitored to protect areas from certain gears or activities to facilitate increased oyster larvae production and brood-stock development.

The proposed rule amendments codify existing proclamation practice into rule due to the lack of variable conditions. To aid in the clarity of regulations for the public, DMF has a policy of moving proclamations into rule once variable conditions have stabilized. As compared to the requirements in Proclamation SF-6-2022, there will be no changes to the oyster sanctuary boundaries as a result of the proposed rule amendments.

### ***Costs***

The proclamation resulted in 256.21 acres of oyster sanctuary being effectively removed from potential public access for shellfish harvesting, trawl-fishing, long-hauling and dredging activities. This removal of water bottom from public access did not directly impact the amount of shellfish habitat available for harvest, however, as it was not existing shellfish habitat before designation as a sanctuary and reef construction. Similarly, it did not have a significant effect on other types of public access as these areas were not functioning as fishing grounds before designation as a sanctuary. As stated above, all sites selected for sanctuary construction must be devoid of shellfish habitat, spawning, or nursery grounds. Due to this, there was no significant economic cost in terms of shellfish harvest or other types of public access as a result of the proclamation.

While not a result of the proposed rule amendments, the costs for constructing oyster sanctuary sites have been and are expected to continue to be covered by state appropriations. Callihan et al (2016)<sup>2</sup> estimated that the State had appropriated roughly \$9 million towards costs of constructing and operating oyster sanctuary sites. This \$9 million commitment covered both existing and future oyster sanctuary sites to date as of 2016. Funds spent on the construction of these two reefs had already been appropriated by the State. Because of this, there is no expectation of construction costs from this proposed rule amendment (or the associated proclamation).

---

<sup>2</sup> Callihan, R., B. Depro, D. Lapidus, T. Sartwell, and C. Viator. 2016. Economic Analysis of the Costs and Benefits of Restoration and Enhancement of Shellfish Habitat and Oyster Propagation in North Carolina. RTI International, Research Triangle Park, NC.

In addition, there are costs to consider pertaining to enforcement. Signage and markings required by the designation as sanctuaries have already been updated. Any future costs associated with signage and enforcement are expected to be negligible. Lastly, given the existing presence of the shellfish sanctuaries and the mechanisms already in place to enforce them, there are no expected impacts to enforcement costs from the addition of these sanctuary areas.

### ***Benefits***

The proposed rule amendments will consolidate existing requirements for various oyster sanctuary boundaries from proclamation into a single rule. This should improve clarity and consistency which should result in small, unquantifiable benefits to DMF and stakeholders. The improved clarity and consistency should reduce the time burden to stakeholders for staying current with requirements of fisheries in which they participate. This should, in turn, provide an unquantifiable benefit to the State related to increased efficiency of program administration as well as incremental improvement to resource protection.

While not attributable to the proposed codification of the existing proclamation, the principal benefit of oyster reef construction is increased production of oysters and other shellfish in the area due to increased broodstock production from the net gain of 256.21 acres of sanctuary bottom. An increase in oyster densities in the sanctuary areas is expected to cause increased broodstock in surrounding waters as well. This effect will likely lead to improved adult oyster density in surrounding shellfish habitats, leading to increased landings of wild oysters in Pamlico Sound with no shifts in effort. However, the timing and magnitude of these increases are not known, and therefore the exact economic gain from these effects cannot be accurately quantified.

In addition to the direct benefits of increased shellfish broodstock, these are also the economic benefits from ecosystem services of oyster reefs. Artificial oyster reefs provide benefits related to water quality, shoreline protection, and increased habitat for other species. Callihan et al (2016) assert an average annual benefit per acre of \$4,178.38 (in 2011). Coupled with the net increase of 256.21 acres of oyster sanctuary, the addition of these reefs could result in an average annual benefit of \$1,070,542 (\$1,431,848 in 2023)<sup>3</sup>, ignoring any direct benefits from increased oyster production and cultivation. Again, this potential benefit is not attributable to the proposed rule amendments but is included here for informational purposes.

---

<sup>3</sup> Average annual benefit inflated from 2011 dollars to 2023 dollars using U.S. Bureau of Labor Statistics [CPI Inflation Calculator](#).



1 **APPENDIX I.**

2

3 15A NCAC 03R .0117 is proposed for amendment as follows:

4

5 **15A NCAC 03R .0117 OYSTER SANCTUARIES**

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

8 (1) Pamlico Sound area:

9 (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N -  
10 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running  
11 westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35°  
12 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.

13 (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75°  
14 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running  
15 westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35°  
16 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.

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

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

29 (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N - 75°  
30 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running  
31 westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35°  
32 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.

33 (f) Gull Shoal: within the area described by a line beginning at a point 35° 23.4520' N - 75°  
34 58.0533' W; running southerly to a point 35° 22.9481' N - 75° 58.0721' W; running  
35 westerly to a point 35° 22.9596' N - 75° 58.5359' W; running northerly to a point 35°  
36 23.4638' N - 75° 58.5173' W; running easterly to the point of beginning.

- 1                    ~~(f)~~(g) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76°  
2                    22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running  
3                    westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35°  
4                    22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
- 5                    ~~(g)~~(h) West Bluff: within the area described by a line beginning at a point ~~35° 18.3160' N - 76°~~  
6                    ~~10.2960' W~~35° 18.3160' N - 76° 10.0690' W; running southerly to a point ~~35° 18.3160' N -~~  
7                    ~~76° 10.0690' W~~35° 18.1290' N - 76° 10.0690' W; running westerly to a point ~~35° 18.1290'~~  
8                    ~~N - 76° 10.0690' W~~35° 18.1290' N - 76° 10.2960' W; running northerly to a point 35°  
9                    ~~18.1290' N - 76° 10.2960' W~~35° 18.3160' N - 76° 10.2960' W; running easterly to the point  
10                    of beginning.
- 11                    ~~(h)~~(i) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76°  
12                    30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running  
13                    westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35°  
14                    14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
- 15                    ~~(i)~~(j) Swan Island: within the area described by a line beginning at a point ~~35° 05.6170' N - 76°~~  
16                    ~~27.5040' W~~35° 05.6414' N - 76° 26.7651' W; running southerly to a point ~~35° 05.6020' N -~~  
17                    ~~76° 26.7650' W~~35° 05.4846' N - 76° 26.7638' W; running westerly to a point 35°  
18                    ~~05.4850' N - 76° 26.7640' W~~35° 05.4992' N - 76° 27.5033' W; running northerly to a point  
19                    ~~35° 05.4990' N - 76° 27.5030' W~~35° 05.6554' N - 76° 27.5041' W; running easterly to the  
20                    point of beginning.
- 21                    ~~(j)~~(k) Raccoon Island: within the area described by a line beginning at a point ~~35° 05.4760' N -~~  
22                    ~~76° 23.5370' W~~35° 05.4760' N - 76° 23.4040' W; running southerly to a point 35°  
23                    ~~05.4760' N - 76° 23.4040' W~~35° 05.3680' N - 76° 23.4040' W; running westerly to a point  
24                    ~~35° 05.3860' N - 76° 23.4040' W~~35° 05.3680' N - 76° 23.5370' W; running northerly to a  
25                    point 35° 05.3680' N - 76° 23.5370' W; running easterly to  
26                    the point of beginning.
- 27                    (l) Cedar Island: within the area described by a line beginning at a point 35° 03.4632' N - 76°  
28                    22.5603' W; running southerly to a point 35° 03.1653' N - 76° 22.5699' W; running  
29                    westerly to a point 35° 03.1731' N - 76° 22.9321' W; running northerly to a point 35°  
30                    03.4710' N - 76° 22.9226' W; running easterly to the point of beginning.
- 31                    ~~(k)~~(m) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76°  
32                    21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running  
33                    westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34°  
34                    58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- 35                    (2) Neuse River area:

- 1 (a) Little Creek: within the area described by a line beginning at a point ~~35° 02.6940' N - 76°~~  
2 ~~30.9840' W~~35° 02.6940' N - 76° 30.7940' W; running southerly to a point ~~35° 02.6940' N -~~  
3 ~~76° 30.7940' W~~35° 02.5380' N - 76° 30.7940' W; running westerly to a point ~~35° 02.5380'~~  
4 ~~N - 76° 30.7940' W~~35° 02.5380' N - 76° 30.9840' W; running northerly to a point ~~35°~~  
5 ~~02.5380' N - 76° 30.9840' W~~35° 02.6940' N - 76° 30.9840' W; running easterly to the point  
6 of beginning.
- 7 (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N - 76°  
8 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running  
9 westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35°  
10 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

11  
12 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;*  
13 *Eff. October 1, 2008;*  
14 *Amended Eff. April 1, 2011;*  
15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*  
16 *2018;*  
17 *Amended Eff. May 1, ~~2021-2021~~; April 1, 2024.*

# Fiscal Impact Analysis of Proposed Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises

**Rule Amendments:** 15A NCAC 03I .0101, 03K .0101, .0104, .0301, .0401, .0403, .0405, .03O .0201, .0501, .0503, 18A .0901, .0906

**Name of Commission:** N.C. Marine Fisheries Commission

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

**Impact Summary:** State government: Minimal  
Local government: No  
Federal government: No  
Substantial impact: No

## AUTHORITY

### N.C. General Statutes

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

**Necessity:** According to the Administrative Procedure Act (APA), specifically G.S. § 150B-19.1(b), the Marine Fisheries Commission (MFC) is charged with reviewing its rules annually to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. § 150B-19.1(a). The Division of Marine Fisheries (DMF) identified 11 rules relating to the Shellfish Relay Program (15A NCAC 03I .0101, 03K .0101, .0104, .0301, .0401, .0403, .0405, 03O .0501, .0503, 18A .0901, and .0906) that set specific requirements for relaying of shellfish from certain polluted areas. Consistent with the APA, these rules or portions of these rules are unnecessary due to the discontinuation of the Shellfish Relay Program. Additional proposed changes to 15A NCAC 03O .0201 for shellfish lease and franchise ("lease") requirements are proposed pursuant to Session Law 2019-37 (Act to Provide Further Support to

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

## **I. Summary**

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting, including the need to undertake conforming rule changes.

DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA. Additional proposed changes to 15A NCAC 03O .0201 conform lease requirements to Session Law 2019-37, Section 3. Please see Appendix I for the 12 proposed rules.

## **II. Introduction and Purpose of Rule Changes**

### Shellfish Relay Requirements

Amendments are proposed to rules that have shellfish relay requirements, including the repeal of **15A NCAC 03K .0104, .0401, .0403, and .0405.**

Rule **15A NCAC 03I .0101** defines terms that apply globally to Chapter 03 (Marine Fisheries) of the N.C. Administrative Code. Specifically, Subitems (2)(i), (2)(j), and (2)(k) of this rule define terms related to leases and the associated planting, culture, marketing, transplanting (relay), and harvest of shellfish. These defined terms only appear in 15A NCAC 03O .0200, which sets standards and requirements for leases. These terms are proposed to be deleted from 15A NCAC 03I .0101; globally applicable definitions for these terms are not necessary. There are a few differences in statutes and rules for shellfish production as it pertains to leases. As a result, definitions are proposed to be added to 15A NCAC 03O .0201 to harmonize these differences, defined for the purpose of this section of rules. These changes are explained in the associated subsection of the discussion section further below. An unrelated conforming change is proposed to 15A NCAC 03I .0101(5)(g) to provide an exception to 15A NCAC 03O .0109 for the defined term "licensee". Additionally, a technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north.

Rule **15A NCAC 03K .0101** makes it unlawful to take shellfish from areas that have been designated as polluted. The current rule provides exceptions as set out in four other rules that contain shellfish relay requirements. These rules were recently amended to remove shellfish relay requirements (15A NCAC 03K .0103, .0107) or are rules described here that are proposed to be repealed (15A NCAC 03K .0104, .0401), and thus the exceptions need to be removed from 15A NCAC 03K .0101. Additional proposed changes to 15A NCAC 03K .0101 update and consolidate the exceptions to this otherwise unlawful activity by using permit names instead of rule references. These exceptions apply to the holder of any of three existing permits: Depuration, Aquaculture Seed Transplant, or Shellfish Relocation. Requirements for these permits ensure shellfish taken from polluted areas are not for immediate human consumption but are for restoration purposes or would be subject to transplant to private beds for growout or for depuration prior to human consumption. Using the permit names will be easier for stakeholders to identify than using rule references.

**15A NCAC 03K .0301** contains proposed changes to remove shellfish relay requirements by deleting Subparagraph (b)(3).

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

#### Shellfish Lease and Franchise Requirements

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

Specifically, definitions for "extensive shellfish culture" and "intensive shellfish culture" set forth in Session Law 2019-37 are proposed to be added for the purpose of 15A NCAC 03O .0200 in Rule 15A NCAC 03O .0201 in Paragraph (a). Upon the effective date of this rule, Section 3 of this law will expire and so the definitions need to be added to MFC rule. Additional definitions for "plant" and "produce" are proposed to clarify the use of the terms for the purpose of this Section of rules. There are a few differences in statutes and rules for shellfish production as it pertains to shellfish leases and franchises, as mentioned in the "Shellfish Relay Requirements" section above regarding 15A NCAC 03I .0101. Session Law 2019-37, G.S. 113-202, G.S. 113-203, and other laws contain requirements for and intersect with shellfish relay and leases. The proposed definitions harmonize these differences, along with conforming changes throughout the rule to delete references to "marketing" shellfish. The term is antiquated and essentially means "harvest", which is remedied by the proposed definitions. Also, as a result of separate rule changes that

became effective June 1, 2022, all lease holders are required to have an Aquaculture Operation Permit (AOP). This makes moot the need to retain the reference to a "marketable size" because requirements are now set through the AOP; there are not currently any minimum size requirements and there is not a "marketable size" definition beyond the three-inch minimum size limit for wild harvest (versus harvest from a lease). So, in Paragraph (a), the proposed definition for "plant" in (a)(3) is consistent with Session Law 2019-37 and G.S. 113-202 and covers 15A NCAC 03I .0101(2)(j) for "shellfish planting effort on leases and franchises" and (2)(k) for "shellfish production on leases and franchises", except "sublegal harvest size to a marketable size" from 03I .0101(2)(k)(i) was left out because it does not align with how the industry works today now that all lease holders are required to have an AOP. The proposed definition for "produce" in (a)(4) is consistent with Session Law 2019-37 and G.S. 113-202 and covers 15A NCAC 03I .0101(2)(i) for "shellfish marketing from leases and franchises".

Subparagraph (b)(4) is proposed for amendment to clarify to what "area" refers. Proposed changes and additions to Paragraphs (c) through (h) incorporate and conform the shellfish production and planting requirements from the law for leases granted before July 1, 2019 and for leases granted on or after this date. Leases are granted for 10-year terms, so these distinctions will need to persist in the rule until the last lease granted prior to July 1, 2019 has expired at which time the rule can be amended again. Lastly, proposed changes to Paragraph (i) require lease holders to meet the listed production, marking, and permit requirements for current leases before being eligible for additional lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons that do not meet the requirements of the MFC rules referenced in 15A NCAC 03O .0201(i) from precluding potential applicants from applying for a lease in affected areas.

The Public Trust Doctrine provides the authority for the state to manage public trust resources. The doctrine states that "public trust lands, water, and living resources in the state are held by the state in trust for the benefit of all the people, and establishes the right of the public to fully enjoy public trust lands, waters, and living resources for a wide variety of recognized public uses. " Consistent with the Public Trust Doctrine, in G.S. 113-201 the "General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also clarifies that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation." Further, the General Assembly empowers the MFC to "make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds." The proposed changes are consistent with this charge.

### **III. Fiscal Analysis**

#### **Shellfish Relay Requirements**

The proposed rule changes are in response to the decision by DMF to discontinue the Shellfish Relay Program due to lack of resources to run the program and lack of widespread use. The program will end effective May 1, 2024. Proposed rule changes themselves will not result in the discontinuation of the relay program; rather, they will reflect the discontinuation of the program already underway. There is not expected to be any economic impact to the state or stakeholders through the proposed changes to these rules due to the rules not impacting any stakeholder practice nor DMF employee job function when the proposed rule amendments would become effective.

### Shellfish Lease and Franchise Requirements

Most of the proposed changes conform 15A NCAC 03O .0201 to the requirements of Session Law 2019-37, consistent with G.S. 113-202. As compared to the regulatory baseline, these proposed amendments will not require any procedural changes and should not result in any additional costs to the state.

Proposed changes to Paragraph (i) would require lease holders to meet the listed production, marking, and permit requirements for current leases of any size before being eligible for additional lease acreage, regardless of acreage of current leases they hold. Doing so would help ensure more efficient and meaningful use of the public trust bottom. The current rule contains a requirement that has been in place since 2008 for existing lease holders that hold *five or more* acres to meet the shellfish *production* requirements in order to *submit* an application for additional lease acreage. Proposed changes would require existing lease holders that hold *any* acres to meet shellfish production, *marking, and permit* requirements to be *eligible* for additional lease acreage. The proposed changes reflect the MFC's authority to not grant additional acreage to persons not using the public trust resource in a manner that is at least at the minimum standards, versus requirements for submitting an application. The expansion from five or more acres to any acres is also consistent with more efficient and meaningful use of the public trust bottom but is not expected to increase the existing responsibilities of DMF employees.

Limiting access to additional leases to individuals found out of compliance with their existing lease could provide small costs to those lease holders. There are currently 195 lease holders holding approximately 2,221 acres of public trust bottom. The number of leases that are applied for each year has increased over time and there were 43 lease applications in 2022. Of those 43 lease applications 20 were existing active lease holders; of those 20 applicants, eleven were under the five-acre limit and would potentially interact with the proposed rule change. As the aquaculture industry grows, applications are expected to also increase. Moving forward, the number of stakeholders that would be subject to this rule change is unknown but expected to grow. Proposed amendments could lead to denial of future lease applications for active lease holders that are not meeting requirements of MFC rules referenced in 15A NCAC 03O .0201(i).

Though small unquantifiable costs to out of compliance lease holders may occur, ensuring lease areas are being used for their allowed activity, as approved by the DMF, consistent with the public trust doctrine and state laws and rules, is expected to be a larger, yet unquantifiable, benefit of using public trust resources that provide long term economic and employment opportunities, water filtration, and support estuarine habitat. Under the proposed rule change the ability to ensure applicants who are not in compliance with their current lease are denied access



to more public trust bottom allows other applicants to use the public trust resource for its intended purpose as described in Section II of this analysis. Overall, proposed amendments to shellfish lease and franchise requirement rules that limit access to new leases for out of compliance stakeholders and clarify definitions are expected to bring small but unquantifiable benefits to both the state and stakeholders.

For this rule package, bringing harmony between terms in rule and law brings consistency and clarity of terms, which is expected to increase efficiency and clarity for DMF staff and stakeholders. No impact to local governments is expected.

1 15A NCAC 03I .0101 is proposed for amendment as follows:

2  
3 **SUBCHAPTER 03I – GENERAL RULES**

4  
5 **SECTION .0100 – GENERAL RULES**

6  
7 **15A NCAC 03I .0101 DEFINITIONS**

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

9 (1) enforcement and management terms:

- 10 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial  
11 fishing operations.
- 12 (b) "Educational institution" means a college, university, or community college accredited by  
13 an accrediting agency recognized by the U.S. Department of Education; an Environmental  
14 Education Center certified by the N.C. Department of Environmental Quality Office of  
15 Environmental Education and Public Affairs; or a zoo or aquarium certified by the  
16 Association of Zoos and Aquariums.
- 17 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except  
18 the Atlantic Ocean.
- 19 (d) length of finfish:
- 20 (i) "Curved fork length" means a length determined by measuring along a line tracing  
21 the contour of the body from the tip of the upper jaw to the middle of the fork in  
22 the caudal (tail) fin.
- 23 (ii) "Fork length" means a length determined by measuring along a straight line the  
24 distance from the tip of the snout with the mouth closed to the middle of the fork  
25 in the caudal (tail) fin, except that fork length for billfish is measured from the tip  
26 of the lower jaw to the middle of the fork of the caudal (tail) fin.
- 27 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal  
28 insertion of the pectoral fin to the fork of the tail measured along the contour of  
29 the body in a line that runs along the top of the pectoral fin and the top of the  
30 caudal keel.
- 31 (iv) "Total length" means a length determined by measuring along a straight line the  
32 distance from the tip of the snout with the mouth closed to the tip of the  
33 compressed caudal (tail) fin.
- 34 (e) "Nongovernmental conservation organization" means an organization whose primary  
35 mission is the conservation of natural resources.
- 36 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:

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

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

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

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

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

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



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

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

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

- (a) "Assignment" means temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
- (b) "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (c) "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in State waters or when the vessel originates from or returns to a North Carolina port.
- (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- (e) "Holder" means a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment.
- (f) "Land" means:
  - (i) for commercial fishing operations, when fish reach the shore or a structure connected to the shore.
  - (ii) for purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.
  - (iii) for recreational fishing operations, when fish are retained in possession by the fisherman.

- 1 (g) "Licensee" means any person holding a valid license from the Department to take or deal  
 2 in marine fisheries ~~resources~~resources, except as otherwise defined in 15A NCAC 03O  
 3 .0109.
- 4 (h) "Logbook" means paper forms provided by the Division and electronic data files generated  
 5 from software provided by the Division for the reporting of fisheries statistics by persons  
 6 engaged in commercial or recreational fishing or for-hire operators.
- 7 (i) "Master" means captain or operator of a vessel or one who commands and has control,  
 8 authority, or power over a vessel.
- 9 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who  
 10 did not possess a valid dealer license for the previous license year in that name. For  
 11 purposes of license issuance, adding new categories to an existing fish dealers license does  
 12 not constitute a new dealer.
- 13 (k) "Office of the Division" means physical locations of the Division conducting license and  
 14 permit transactions in Wilmington, Morehead City, Washington, ~~Morehead City,~~ Roanoke  
 15 Island, and Elizabeth City, and Roanoke Island, North Carolina. Other businesses or  
 16 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or  
 17 Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- 18 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs  
 19 operations of a business entity, such as a corporate officer or executive level supervisor of  
 20 business operations, and the person responsible for use of the issued license in compliance  
 21 with applicable statutes and rules.
- 22 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise  
 23 directs a recreational fishing tournament and is the holder of the Recreational Fishing  
 24 Tournament License.
- 25 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,  
 26 exchanged, bartered, distributed, or landed.
- 27 (o) "Transfer" means permanent transferal to another person of privileges under a license for  
 28 which transfer is permitted. The person transferring the license retains no rights or interest  
 29 under the license transferred.
- 30 (p) "Trip ticket" means paper forms provided by the Division and electronic data files  
 31 generated from software provided by the Division for the reporting of fisheries statistics  
 32 by licensed fish dealers.

34 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*  
 35 *Eff. January 1, 1991;*  
 36 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*  
 37 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*

1 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*  
2 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*  
3 *Amended Eff. August 1, 2000;*  
4 *Temporary Amendment Eff. August 1, 2000;*  
5 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*  
6 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*  
7 *Readopted Eff. June 1, ~~2022~~, 2022;*  
8 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

1 15A NCAC 03K .0101 is proposed for amendment as follows:

2  
3 **SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS, AND MUSSELS**

4  
5 **SECTION .0100 – SHELLFISH, GENERAL**

6  
7 **15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**

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

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

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

19 (b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest  
20 areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such  
21 closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900  
22 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of  
23 Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252- 726-7021.

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

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

30  
31 *History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-203; 113-221.1; 113-221.2;*  
32 *143B-289.52;*  
33 *Eff. January 1, 1991;*  
34 *Amended Eff. July 1, 1993;*  
35 *Temporary Amendment Eff. July 1, 1999;*  
36 *Amended Eff. August 1, 2000;*  
37 *Temporary Amendment Eff. October 1, 2001;*

- 1 *Amended Eff. October 1, 2008; April 1, 2003;*
- 2 *Readopted Eff. March 15, ~~2023~~, 2023;*
- 3 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0104 is proposed for repeal as follows:

2  
3 **15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS**

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

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

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

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

13 ~~(1) the status of shellfish resources available for harvest from public bottom;~~

14 ~~(2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;~~

15 ~~(3) market factors affecting sale of shellfish from public bottom; and~~

16 ~~(4) availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying~~  
17 ~~activity.~~

18 ~~(e) The Fisheries Director, shall close by proclamation any shellfish lease or franchise for which the owner has~~  
19 ~~obtained a permit to relay shellfish from polluted public waters or franchises. The leases and franchises shall remain~~  
20 ~~closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening~~  
21 ~~of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in~~  
22 ~~Paragraph (d) of this Rule.~~

23  
24 *History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52;*

25 *Eff. January 1, 1991;*

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

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

28 *Amended Eff. April 1, 2003;*

29 *Readopted Eff. March 15, 2023, 2023;*

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

1 15A NCAC 03K .0301 is proposed for amendment as follows:

2

3

**SECTION .0300 - HARD CLAMS (MERCENARIA)**

4

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

6 (a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing  
7 operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams

8 (except Rangia or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section.

9 Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately  
10 returned to the bottom from which they were taken. In determining whether the size and harvest limits have been

11 exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any  
12 combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public

13 bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.

14 (b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in  
15 Rule .0302 of this Section may or may not apply for:

16 (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900  
17 and the North Carolina Hard Clam Fishery Management Plan; or

18 (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the  
19 Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery  
20 Management Plan; or Plan.

21 ~~(3) relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this~~  
22 ~~Subchapter.~~

23

24 *History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221.2; 143B-289.52;*

25 *Eff. January 1, 1991;*

26 *Amended Eff. March 1, 1994;*

27 *Readopted Eff. March 15, ~~2023~~, 2023;*

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

1 15A NCAC 03K .0401 is proposed for repeal as follows:

2

3

**SECTION .0400 - RANGIA CLAMS**

4

**15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS**

6 ~~It shall be unlawful to take Rangia clams or their shells by any method from polluted waters without first obtaining a~~

7 ~~Permit to Harvest Rangia Clams from Polluted Areas from the Fisheries Director. The permit application shall include~~

8 ~~a list of all designees operating under the permit. The permit shall designate the area, means and methods, and times~~

9 ~~in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia~~

10 ~~clams are to be landed and the method for disposing of Rangia clam meats. The procedures and requirements for~~

11 ~~obtaining permits are found in 15A NCAC 03O .0500.~~

12

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

14 *Eff. January 1, 1991;*

15 *Amended Eff. August 1, 2004;*

16 *Readopted Eff. March 15, ~~2023-2023~~;*

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



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

2

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

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

6

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

8 *Eff. January 1, 1991;*

9 *Amended Eff. August 1, 2004;*

10 *Readopted Eff. April 1, ~~2019, 2019~~;*

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

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

2

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

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

6

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

8 *Eff. August 1, 2004;*

9 *Readopted Eff. April 1, ~~2019~~ 2019;*

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

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

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

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

7 (a) For the purpose of this Section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4

5     *History Note:     Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206;*

6                     *143B-289.52; S.L. 2019-37, s. 3;*

7                     *Eff. January 1, 1991;*

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

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

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

11                    *Readopted Eff. August 23, ~~2022~~, 2022;*

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

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

2  
3 **SECTION .0500 - PERMITS**

4  
5 **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

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

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

33 (b) A permittee shall hold a valid:

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

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

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

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

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

- 9 (1) Depuration Permit;  
 10 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~  
 11 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or~~  
 12 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish; or~~  
 13 ~~(5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as~~  
 14 provided in G.S. 113-169.2.

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

- 18 (1) Depuration Permit; or  
 19 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~  
 20 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.~~  
 21 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish.~~

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

- 23 (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold  
 24 an Aquaculture Collection Permit.  
 25 (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for  
 26 the species harvested and the gear used under the Aquaculture Collection Permit.

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

- 28 (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the  
 29 following types of gear for an initial permit and at intervals of three consecutive license years  
 30 thereafter:  
 31 (A) a gill net;  
 32 (B) a trawl net; or  
 33 (C) a beach seine.

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



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

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

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

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

13 (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries  
14 Commission;

15 (2) the applicant's demonstration of a valid justification for the permit; and

16 (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

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

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

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

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

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

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

32  
33 *History Note:* Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;

34 *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*

35 *Eff. April 1, 2001;*

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

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

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

2

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

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

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

7 (2) It shall be unlawful:

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

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

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

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

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

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

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

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

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

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

32 (d) Coastal Recreational Fishing License Exemption Permit:

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

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

- 4 (A) individuals with physical or mental impairment;  
 5 (B) members of the United States Armed Forces and their dependents, upon presentation of a  
 6 valid military identification card;  
 7 (C) individuals receiving instruction on recreational fishing techniques and conservation  
 8 practices from employees of state or federal marine or estuarine resource management  
 9 agencies or instructors affiliated with educational institutions; and  
 10 (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

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

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

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

- 19 (A) the name, date, time, and physical location of the event;  
 20 (B) documentation that substantiates local, state, or federal involvement in the organized  
 21 fishing event, if applicable;  
 22 (C) the cost or requirements, if any, for an individual to participate in the event; and  
 23 (D) an estimate of the number of participants.

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

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

- 28 (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine  
 29 Fisheries, the previous day's landings for the permitted fishery to the Division. Landings  
 30 for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable  
 31 to fax or electronically mail the required information, the permittee shall call in the  
 32 previous day's landings to the Division;  
 33 (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request  
 34 or no later than five days after the close of the season for the fishery permitted;  
 35 (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;  
 36 (D) contact the Division daily, regardless of whether a transaction for the fishery for which a  
 37 dealer is permitted occurred; and

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

1 (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to  
2 fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,  
3 due on February 1 of each year. Such reports shall be filed on forms provided by the Division and  
4 shall include a monthly account of the number of crabs harvested, a statement of percent mortality  
5 up to the point of release, the harvest method, the number or percent of males and females, and the  
6 disposition of bled crabs prior to release.

7 (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to  
8 fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management  
9 Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery  
10 Management Plan for Horseshoe Crab is incorporated by reference including subsequent  
11 amendments and editions. Copies of this plan are available via the Internet from the Atlantic States  
12 Marine Fisheries Commission at <http://www.asmfmc.org/fisheries-management/program-overview>  
13 and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC  
14 28557, at no cost.

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

16 (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday  
17 without first obtaining a Permit for Weekend Trawling for Live Shrimp.

18 (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls  
19 from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.

20 (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(k)(1)~~(g)(1)  
21 of this Rule to:

22 (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with  
23 trawls;

24 (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in  
25 Internal Coastal Waters;

26 (C) possess more than one gallon of dead shrimp (heads on) per trip;

27 (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait  
28 tanks, with aerators or circulating water, with a minimum combined tank capacity of 50  
29 gallons; or

30 (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or  
31 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

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

34 (i) Scientific or Educational Activity Permit:

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

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

1  
2  
3  
4  
5  
6  
7  
8

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



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

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

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

6 The following definitions shall apply to this Section.

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

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

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

1

*Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*

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

2

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

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

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

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

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

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

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

22

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

24 *Eff. June 1, 1989;*

25 *Readopted Eff. May 1, 2021-2021;*

26 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*