

Rulemaking

May 2024 Business Meeting

Document

Rulemaking Update Memo

2023-2024 Rulemaking Cycle
Timeline

News Release for 2023-2024
Rulemaking Public Hearing

North Carolina Register
Excerpt

Public Comments

Public Hearing Summary

2024-2025 Rulemaking Cycle
Timeline

Issue Paper Review

Interstate Wildlife Violator
Compact Issue Paper



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

May 3, 2024

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A. Request the MFC vote on final approval of the 20 rules remaining in the 2023-2024 Rulemaking Cycle. Request the MFC vote on the management option and associated proposed rulemaking language for one issue under development in the 2024-2025 Rulemaking Cycle.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina N.C.G.S. § 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes a report phase, followed by rule readoption. For 15A NCAC 03 (Marine Fisheries), the MFC completed the initial rule readoption process.
 - For 15A NCAC 18A (Sanitation), the MFC had 79 rules remaining for readoption. On January 31, 2024, the Rules Review Commission (RRC) approved these rules. The MFC has completed the initial rule readoption process for 15A NCAC 18A.
 - For the second iteration of the periodic review requirements, the RRC approved the report deadlines effective June 1, 2023. For the MFC rules, the final reports will be due in early 2027. DMF staff will provide further information to the MFC as that time approaches.
- To meet rule readoption deadlines, the MFC approved 83 rules in the 2023-2024 Rulemaking Cycle at its November 2023 business meeting. There are 20 rules remaining in the package awaiting final approval by the MFC at its May 2024 business meeting.
- A rulemaking issue is under development for the 2024-2025 Rulemaking Cycle. At its May 2024 business meeting, the MFC will be asked to vote on the management option for this issue so the required fiscal analysis can be developed, and the formal rulemaking process can be ready to begin at the MFC's August 2024 business meeting.

Action Needed

The MFC will be asked to vote on final approval of the 20 rules remaining in the 2023-2024 Rulemaking Cycle. The MFC will also be asked to vote on the management option and associated proposed rulemaking language for the "Interstate Wildlife Violator Compact Issue Paper" so the rulemaking development process can continue for the 2024-2025 Rulemaking Cycle.

Recommendations

- 2024-2025 Annual Rulemaking Cycle: "Interstate Wildlife Violator Compact Issue Paper": The Division of Marine Fisheries recommends the Marine Fisheries Commission adopt rules to comply with existing statutes and directives to enter into the Interstate Wildlife Violator Compact.
- For more information, please refer to the rulemaking section of the briefing materials.

2023-2024 Rulemaking Cycle Update (20 of 103 rules remaining)

At its May 2023 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 103 rules. A summary of the proposed rules by subject is provided below. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. A news release was issued August 1, 2023, and the proposed rules were published in the August 1, 2023, issue of the *N.C. Register*, beginning the public comment process. These documents are provided in the rulemaking section of the briefing materials.

The MFC accepted public comments on the proposed rules from August 1 through 5 p.m. October 2, 2023. Two written public comments were submitted about the rules that are described with the corresponding subjects below. A public hearing was held via WebEx with a listening station at the DMF's Central District Office in Morehead City on August 16 at 6 p.m. One member of the public provided comments that are described with the corresponding subject below. The public comments and a summary of the public hearing are provided in the rulemaking section of the briefing materials.

The MFC received the public comments at its November 2023 business meeting and voted to give final approval of 83 of the 103 rules that are related to shellfish plants and inspections, to meet re-adoption deadlines. There are 80 rules that became effective on April 1, 2024. These rules were published in the [April 1, 2024 supplement](#) to the April 1, 2020 North Carolina Marine Fisheries Commission Rules (see <https://www.deq.nc.gov/marine-fisheries/rules-regulations/marine-fisheries-commission-rules/4-1-24-mfc-rulebook-supplement/open>). Three rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 and are available for review during the 2024 short session. The remaining 20 rules are scheduled for final approval by the MFC at its May 2024 business meeting.

READOPTION OF SHELLFISH PLANT AND INSPECTION RULES IN 15A NCAC 18A .0300 THROUGH .0800 (2 of 85 rules remaining)

Pursuant to N.C.G.S. § 150B-21.3A, this package of 85 rules in 15A NCAC 03K and 18A consisted of the re-adoption of one rule with no changes, re-adoption of 55 rules with amendments, repeal through re-adoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule for shellfish plants and inspections. The changes 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. There are two remaining rules with minor conforming amendments that are scheduled for final approval by the MFC at its May 2024 business meeting: 15A NCAC 03K .0110 and 18A .0302. No public comments were submitted about these rules.

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

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

OYSTER SANCTUARY RULE CHANGES (1 rule)

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

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 ended May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for the relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the Administrative Procedure Act. There was one commenter at the public hearing that spoke against phasing out the shellfish relay program.

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

2024-2025 Rulemaking Cycle (6 rules)

At the MFC's February 2024 business meeting, DMF staff provided a preview of potential rules in the MFC's 2024-2025 annual rulemaking cycle, including rules to implement the Interstate Wildlife Violator Compact. This cycle is scheduled to begin the rulemaking process at the MFC's August 2024 business meeting; a table of the steps in the process is included in the briefing materials. The MFC's management option and associated proposed language for rulemaking is needed for development of the required fiscal analysis so the formal rulemaking process can be ready to begin in August. A table summarizing this issue is included in the briefing materials, as is the corresponding issue paper; a summary description is also included here. Proposed rules would have an earliest effective date of May 1, 2025.

INTERSTATE WILDLIFE VIOLATOR COMPACT RULE ADOPTIONS (6 rules)

The Interstate Wildlife Violator Compact is a voluntary interstate agreement that provides participating states with a mechanism to participate in a reciprocal program to: (1) promote compliance with the statutes, laws, administrative rules and regulations relating to management of wildlife resources in their respective states; and (2) provide for the fair and impartial treatment of wildlife violators operating within the participating states in recognition of the individual's right of due process and the sovereign status of a party state. North Carolina's participation in the Interstate Wildlife Violator Compact has been enacted into state law, so it must be implemented and enforced. Article 22B includes G.S. § 113-300.7, which requires the Wildlife Resources Commission and the Marine Fisheries Commission to adopt rules necessary to carry out the purpose of Article 22B. The Wildlife Resources Commission has adopted its rules. For the purposes of the Interstate Wildlife Violator Compact, "wildlife" includes marine and estuarine resources managed by the Marine Fisheries Commission and the Division of Marine Fisheries.

Background Information

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

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

The review has two parts. The first is a report phase, which has concluded for the first iteration of the periodic review requirements. The second part is the readoption of rules. An evaluation of the rules under the authority of the MFC was undertaken in two lots (see Figure 1.) The MFC had 211 rules in Chapter 03 (Marine Fisheries), of which 172 were subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that were also subject to readoption.

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

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

For 15A NCAC 03 (Marine Fisheries), the MFC completed the initial rule readoption process. For 15A NCAC 18A (Sanitation), the MFC had 79 rules remaining for readoption. On January 31, 2024, the RRC approved these rules. The MFC has completed the initial rule readoption process for 15A NCAC 18A. For the second iteration of the periodic review requirements, the RRC approved the report deadlines effective June 1, 2023. For the MFC rules, the final reports will be due in early 2027.

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

May 2024

Time of Year	Action
February-April 2023	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 26, 2023	MFC approved Notice of Text for Rulemaking
Aug. 1, 2023	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 1-Oct. 2, 2023	Public comment period held
Aug. 16, 2023	Public hearing held via WebEx with listening station
Nov. 17, 2023	MFC receives public comments and approves 83 of 103 permanent rules
Jan. 31, 2024	83 rules approved by Office of Administrative Hearings/ Rules Review Commission
April 1, 2024	Effective date of 80 rules not subject to legislative review
April 1, 2024	Rulebook supplement available online
2024 legislative session	Possible effective date of 3 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 24, 2024	MFC receives reminder of public comments and votes on final approval of remaining 20 of 103 permanent rules
July 31, 2024	20 rules reviewed by Office of Administrative Hearings/ Rules Review Commission
August 1, 2024	Earliest effective date of rules not subject to legislative review
August 1, 2024	Rulebook supplement available online
2025 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-37, and S.L. 2019-198 and G.S. 14-4.1.

Roy Cooper
Governor

Elizabeth S. Biser
Secretary DEQ



Kathy B. Rawls
Director

Release: Immediate
Date: Aug. 1, 2023

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

MEDIA ADVISORY: Comment period opens, public hearing scheduled for 103 marine fisheries rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on 103 proposed rules pertaining to data collection and the prevention of harassment of N.C. Division of Marine Fisheries staff, the Shellfish Relay Program and shellfish leases and franchises, oyster sanctuaries, and shellfish sanitation procedures.

A public hearing will be held by web conference on Aug. 16 at 6 p.m. A listening station will be established at the N.C. Division of Marine Fisheries Central District Office at 5285 Highway 70 West, Morehead City. The public may join the meeting online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing. Those who wish to speak at the listening station may sign up when they arrive.

Members of the public may also submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Oct. 2, 2023.

Links to the public hearing registration form and online comment form, as well as text of the proposed rules and links to join the meeting, can be found on the N.C. Marine Fisheries Commission's [2023-2024 Proposed Rules Page](#).

Data Collection and Harassment Prevention -- Proposed amendments to 15A NCAC 03I .0113 broaden and enhance protections for Division of Marine Fisheries employees from verbal, physical or sexual harassment by those engaging in fishing activities while the employees are in the process of obtaining data about fishing activity. Proposed amendments also strengthen rule language that requires fishermen to cooperate with Division data collection programs. The proposed amendments are needed because the Division has had increasing occurrence and severity of harassment incidences and decreasing participation in its data collection initiatives.

Shellfish Relay Program and Shellfish Leases and Franchises – The proposed repeals of 15A NCAC 03K .0104, .0401, .0403, and .0405 and amendments to 15A NCAC 03I .0101, 03K .0101, .0301, 03O .0201, .0501, .0503, 18A .0901, and .0906 remove outdated shellfish relay requirements, reflecting the discontinuation of the Division of Marine Fisheries Shellfish Relay Program. Proposed changes to a shellfish lease rule (15A NCAC 03O .0201) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas.

Website: <http://www.ncmarinefisheries.net>

Facebook: <https://www.facebook.com/NCMarineFisheries>

Instagram: https://www.instagram.com/NC_DMFB

Twitter: https://twitter.com/NC_DMFB

P.O. Box 769, 3441 Arendell St., Morehead City N.C. 28577

Oyster Sanctuaries – Proposed amendments to 15A NCAC 03R .0117 add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island). These changes were implemented by proclamation while the rulemaking process is undertaken.

Commercial Shellfish Sanitation and Processing Procedures – Rules in 15A NCAC 03 and 18A are proposed for readoption, amendment, or repeal under a state-mandated periodic review schedule. The proposed changes are to ensure that North Carolina remains in compliance with National Shellfish Sanitation Program requirements. Many of the proposed rules codify existing practices or regulations implemented by proclamation.

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in November 2023 and have an earliest effective date of April 1, 2024.

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

WHO:	Marine Fisheries Commission
WHAT:	Public Hearing for Proposed Rules
WHEN:	Aug. 16 at 6 p.m.
WHERE:	Meeting by Web Conference Click Here for Information and to Sign Up to Speak

###

NORTH CAROLINA REGISTER

VOLUME 38 • ISSUE 03 • Pages 103 – 171

August 1, 2023

I. EXECUTIVE ORDERS	
Executive Order No. 282	103 – 104
II. PROPOSED RULES	
Environmental Quality, Department of	
Marine Fisheries Commission	105 – 144
Coastal Resources Commission	144 – 146
III. EMERGENCY RULES	
Health and Human Services, Department of	
Health Service Regulation, Division of	147 – 151
IV. APPROVED RULES	152 – 163
Health and Human Services, Department of	
Child Care Commission	
Justice, Department of	
Criminal Justice Education and Training Standards Commission	
Environmental Quality, Department of	
Environmental Management Commission	
Occupational Licensing Boards and Commissions	
Dental Examiners, Board of	
Nursing, Board of	
Optometry, Board of Examiners, in	
Real Estate Commission	
State Human Resources, Office of	
State Human Resources Commission	
V. RULES REVIEW COMMISSION	164 – 171

PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
1711 New Hope Church Road
Raleigh, NC 27609
Telephone 984-236-1850
Fax 984-236-1947*

*Donald R. van der Vaart, Director
Ashley B. Snyder, Codifier of Rules
Dana McGhee, Publications Coordinator
Cathy Matthews-Thayer, Editorial Assistant
Julie B. Eddins, Register Drafter*

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Ashley B. Snyder, Codifier of Rules

ashley.snyder@oah.nc.gov

984-236-1941

Dana McGhee, Publications Coordinator

dana.mcghee@oah.nc.gov

984-236-1937

Cathy Matthews-Thayer, Editorial Assistant

cathy.thayer@oah.nc.gov

984-236-1901

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Brian Liebman, Commission Counsel

brian.liebman@oah.nc.gov

984-236-1948

Lawrence Duke, Commission Counsel

lawrence.duke@oah.nc.gov

984-236-1938

William W. Peaslee, Commission Counsel

bill.peaslee@oah.nc.gov

984-236-1939

Seth M. Ascher, Commission Counsel

seth.ascher@oah.nc.gov

984-236-1934

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

984-236-1940

Julie B. Eddins, Administrative Assistant

julie.eddins@oah.nc.gov

984-236-1935

Fiscal Notes & Economic Analysis

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Julie Ventaloro, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0694

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

919-715-2893

amy.bason@ncacc.org

NC League of Municipalities

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

919-715-2925

mjackson@nclm.org

Legislative Process Concerning Rulemaking

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

919-733-2578

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

Chris Saunders, Staff Attorney

Aaron McGlothlin, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2023 – December 2023

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/14/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/14/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 18A .0437-.0439, amend the rules cited as 15A NCAC 03I .0101, .0113; 03K .0101, .0110, .0301; 03O .0101, .0109, .0112, .0201, .0301, .0501, .0503; 03R .0117; 18A .0302, .0901, .0906, repeal the rules cited as 15A NCAC 03K .0104, .0401, .0403, .0405; 18A .0704, readopt with substantive changes the rules cited as 15A NCAC 18A .0301, .0401-.0410, .0412-.0422, .0424, .0426-.0430, .0432-.0435, .0501, .0502, .0504, .0601-.0603, .0605-.0616, .0618-.0620, .0701, .0801, readopt without substantive changes the rule cited as 15A NCAC 18A .0423, repeal through readoption the rules cited as 15A NCAC 18A .0305, .0411, .0436, .0503, .0604, .0617, .0621, .0702, .0703, .0705-.0713 and .0802-.0806.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rules is available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

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

Proposed Effective Date: April 1, 2024 (15A NCAC 03K .0110; 03R .0117; 18A .0301, .0305, .0401-.0418, .0421-.0424, .0426, .0428-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806)

Rules automatically subject to legislative review: S.L. 2019-198: 15A NCAC 03I .0113; 03K .0101, .0104, .0301, .0401, .0403, .0405; 03O .0101, .0109, .0112, .0301, .0501, .0503; 18A .0302, .0419, .0420, .0427; S.L. 2019-37: 15A NCAC 03O .0201

15A NCAC 03I .0101- Pending legislative review of 15A NCAC 03O .0201

15A NCAC 18A .0901, .0906 - Pending legislative review of 15A NCAC 03K .0104

Public Hearing:
Date: August 16, 2023
Time: 6:00 p.m.
Location:

WebEx Events meeting link:
<https://ncdenrits.webex.com/ncdenrits/j.php?MTID=mfc74bc5016579e7a09f2b2ef4c36727d>
Event number: 2425 745 2610
Event password: 1234
Event phone number: 1-415-655-0003
Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:

Shellfish Relay Program
15A NCAC 03I .0101 DEFINITIONS
15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS
15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS
15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS
15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS
15A NCAC 03K .0403 DISPOSITION OF MEATS
15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED
15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES
15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS
15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC
15A NCAC 18A .0901 DEFINITIONS
15A NCAC 18A .0906 RESTRICTED AREAS

Proposed repeals (15A NCAC 03K .0104, .0401, .0403, .0405) and amendments (15A NCAC 03I .0101, 03K .0101, .0301, 03O .0201, .0501, .0503, 18A .0901, .0906) make conforming changes to remove outdated shellfish relay requirements to reflect the discontinuation of the N.C. Division of Marine Fisheries Shellfish Relay Program. Additional proposed amendments to 15A NCAC 03K .0101 clarify exceptions for activities allowed in polluted shellfish areas that require an Aquaculture Seed Transport Permit, Depuration Permit, or Shellfish Relocation Permit. Additional proposed amendments to 15A NCAC 03I .0101 move three defined terms to 15A NCAC 03O .0201 and update them consistent with Session Law 2019-37, Section 3, to apply to that section of rules about shellfish leases and franchises. Proposed amendments to Paragraphs (c) through (h) of 15A NCAC 03O .0201 incorporate and conform the shellfish production and planting requirements from Session Law 2019-37 for shellfish leases granted before July 1, 2019 and for shellfish leases granted on or after this date; proposed amendments to Paragraph (i) require shellfish lease or franchise holders to meet the listed production, marking, and permit requirements for current

shellfish leases before being eligible for additional shellfish lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons not in good standing from precluding potential applicants from applying for a shellfish lease in affected areas. A technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north. Additional minor changes to this group of rules correct cross-references to other rules.

Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources

15A NCAC 03I .0113 DATA COLLECTION

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

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

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

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

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

Proposed amendments make it unlawful for a holder of a Standard Commercial Fishing License or Retired Standard Commercial Fishing License (15A NCAC 03O .0101), an assignee of a Standard Commercial Fishing License (15A NCAC 03O .0109), a person involved in regulated activity related to for-hire fishing (15A NCAC 03O .0112), and a holder of a Recreational Commercial Gear License (15A NCAC 03O .0301) to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by the N.C. Division of Marine Fisheries. The amendments support the importance of participation by persons engaged in regulated fishing activity in division data collection for the conservation of marine and estuarine resources and the protection of public health related to the public health programs that fall under the authority of the N.C. Marine Fisheries Commission, and also provide a safer working environment for division employees.

Oyster Sanctuary Changes

15A NCAC 03R .0117 OYSTER SANCTUARIES

Proposed amendments add the boundaries of the two newest oyster sanctuaries (Cedar Island and Gull Shoal) and correct boundaries for three other oyster sanctuaries (Pea Island, Raccoon Island, and Swan Island) where recently published coordinates were found to be inconsistent with permitted and marked reef boundaries. These changes will protect oysters from bottom disturbing gear and safeguard boaters navigating the sanctuaries. Coordinates for three sanctuaries are proposed to be reorganized to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuary, nor the coordinate pairs themselves.

15A NCAC 18A Readoptions

15A NCAC 03K .0110, 18A .0301, .0302, .0305, .0401-.0424, .0426-.0430, .0432-.0439, .0501-.0504, .0601-.0621, .0701-.0713, .0801-.0806

North Carolina G.S. 150B-21.3A requires State agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. This group of 85 rules in 15A NCAC 03 and 18A is proposed for the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule pursuant to this requirement. Proposed changes would help ensure that North Carolina remains in full compliance with National Shellfish Sanitation Program requirements, allow the N.C. Division of Marine Fisheries to increase clarity of rules for stakeholders, and allow the division to efficiently support and enforce rules for the protection of public health related to the consumption of shellfish.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557 (Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>)

Comment period ends: October 2, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

State funds affected

- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

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

- (1) enforcement and management terms:
 - (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.
 - (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.
 - (d) length of finfish:
 - (i) "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the

- (iv) top of the pectoral fin and the top of the caudal keel. "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.
- (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
 - (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;
 - (ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;
 - (iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;
 - (iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or
 - (v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.
- (g) "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.

- (i) "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
 - (j) "Scientific institution" means one of the following entities:
 - (i) an educational institution as defined in this Item;
 - (ii) a state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) a professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii) of this Item.
- (2) fishing activities:
- (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment.
 - (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
 - (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment.
- (d) "Depuration" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any artificially controlled means.
 - (e) "Long haul operation" means fishing a seine towed between two vessels.
 - (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
 - (g) "Possess" means any actual or constructive holding whether under claim of ownership or not.
 - (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
 - ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.~~
 - ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and the placement of those materials on privately held shellfish bottoms for increased shellfish production.~~
 - ~~(k) "Shellfish production on leases and franchises" means:

 - (i) the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open~~

- ~~waters and the natural cleansing of those shellfish.~~
- (4)(i) "Swipe net operations" means fishing a seine towed by one vessel.
 - ~~(m)(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 - ~~(n)(k)~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) gear:
- (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
 - (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.
 - (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:
 - (i) cast nets;
 - (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (iv) gigs or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
 - (v) hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
 - (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-bait trotline;
 - (vii) landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (d) "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
 - (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
 - (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 - (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
 - (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
 - (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
 - (j) "Hoop net" means an entrapment net supported by a series of internal or
 - (viii) minnow traps when no more than two are in use;
 - (ix) seines less than 30 feet in length;
 - (x) spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

- external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
 - (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
 - (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
 - (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
 - (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
 - (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 - (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:
 - (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (c) "Coral" means:
 - (i) fire corals and hydrocorals (Class Hydrozoa);
 - (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
 - (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
 - (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
 - (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);

- (iv) sponges (Phylum Porifera);
 - (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
 - (vi) Bryozoans (Phylum Bryozoa);
 - (vii) tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
 - (viii) mussel banks (Phylum Mollusca: Gastropoda); and
 - (ix) acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:
- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
 - (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

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

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

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

take or deal in marine fisheries ~~resources~~ resources, except as otherwise defined in 15A NCAC 03O .0109.

- (h) "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.
- (i) "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
- (j) "New fish dealer" means any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (k) "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Morehead City, Washington, Morehead City, Roanoke Island, and Elizabeth City, and Roanoke Island, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.
- (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (n) "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- (o) "Transfer" means permanent transferal to another person of privileges under a license for which

transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

- (p) "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

Authority G.S. 113-134; 113-174; 113-182; 143B-289.52.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION

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

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

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

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

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

- (1) harass;
(2) sexually harass, including making sexual connotations;

- (3) oppose;
(4) impede;
(5) intimidate;
(6) interfere;
(7) prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties; or
(8) tamper with or destroy samples or equipment;
50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including subsequent amendments and editions. A copy of the reference material can be found at https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725, at no cost.
(e) Exceptions to 50 CFR 600.725(t) include "assault".

Authority G.S. 113-134; 113-170.3; 113-174.1; 113-181; 113-182; 113-221.2; 143B-289.52.

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

SECTION .0100 – SHELLFISH, GENERAL

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

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

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

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

(b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-726-7021.

(c) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels to protect the shellfish populations for management purposes or for protection

of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission not specified in ~~Paragraph (a)~~ Paragraphs (a) or (b) of this Rule.

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

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-203; 113-221.1; 113-221.2; 143B-289.52.

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

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

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

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

- (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport ~~of~~ of:
 - (A) oysters;
 - (B) clams;
 - (C) scallops; ~~or and~~
 - (D) mussels;
- (2) areas used to store shellfish;
- (3) means and methods to take shellfish;
- (4) vessels used to take shellfish; ~~or and~~
- (5) shellstock conveyances as defined in 15A NCAC 18A .0301.

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

- (1) specify time and temperature controls;
- (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301, or cross-contamination or adulteration of shellfish;
- (3) specify sanitation control procedures set forth in 21 ~~Code of Federal Regulations (CFR) Part~~ CFR 123.11;
- (4) specify Hazard Analysis Critical Control Point (HACCP) requirements set forth in 21 ~~CFR Part~~ CFR:
 - (A) 123.3 Definitions;
 - (B) 123.6 HACCP Plan;
 - (C) 123.7 Corrective Actions;
 - (D) 123.8 Verification;
 - (E) 123.9 Records; and
 - (F) 123.28 Source Controls;

- (5) specify tagging and labeling requirements;
- (6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
- (7) require sales records and collection and submission of information to provide a mechanism for tracing shellfish product back to the water body of origin; and
- (8) require product recall and specify recall procedures.

21 CFR 123.3, 123.6-9, 123.11, and 123.28 are hereby incorporated by reference, including subsequent amendments and editions. A copy of the reference materials material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ceda1d9938f4cdd9ab&mc=true&tpl=/ecfr/browse/Title21/21tab_02.tpl, free of charge. <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123?toc=1>, at no cost.

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

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52.

SECTION .0300 - HARD CLAMS (MERCENARIA)

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

(a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which they were taken. In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.

(b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in Rule .0302 of this Section may or may not apply for:

- (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan; or
- (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and

- (3) consistent with the North Carolina Hard Clam Fishery Management ~~Plan; or Plan.~~ ~~relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this Subchapter.~~

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

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

- (4) certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years.

- (5) current articles of incorporation and a current list of corporate officers when purchasing a license or Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall notify the Morehead City Office of the Division within five days of changing the vessel master.

- (6) a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.

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

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

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

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

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

- (B) a notarized certification that the applicant was not required to file a

Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221.2; 143B-289.52.

SECTION .0400 - RANGIA CLAMS

15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS

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

15A NCAC 03K .0403 DISPOSITION OF MEATS

Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52.

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

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

SUBCHAPTER 030 - LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

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

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

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

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

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

- North Carolina State Income Tax Return for the previous calendar or tax year; or
 - (C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
 - (2) All other types of licenses:
 - (A) North Carolina voter registration card;
 - (B) current North Carolina Driver's License;
 - (C) current North Carolina Certificate of Domicile;
 - (D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 - (E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.
 - (e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:
 - (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.
 - (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:
 - (A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or
 - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
 - (3) Fish Dealer License:
 - (A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and
 - (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.
 - (4) Land or Sell License:
 - (A) valid documentation papers or current motor boat registration, or copy thereof; or
 - (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
- The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.
- (5) Ocean Fishing Pier License:
 - (A) the information required in G.S. 113-169.4; and
 - (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.
 - (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.
 - (7) Spotter Plane License:
 - (A) the information required in G.S. 113-171.1;
 - (B) the current aircraft registration; and
 - (C) a list of operators.
 - (f) For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:
 - (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
 - (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina;
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
 - (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean than the number of vessels that the person owns that individually met the eligibility requirements of Parts (f)(2)(A) and (f)(2)(B) of this Rule.
 - (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
 - (5) at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel

master for each License to Land Flounder from the Atlantic Ocean issued.

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

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

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

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

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

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

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

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

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

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

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

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

~~(b)(c)~~ The Division of Marine Fisheries shall provide assignment forms to the licensee upon request. Only Division assignment forms shall be used to obtain an assignment. On the assignment

form, the licensee shall designate what, if any, endorsements are included in the assignment. Endorsements shall not be assigned independent of the Standard Commercial Fishing License. It shall be unlawful for the licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:

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

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

~~(d)(e)~~ Assignments shall terminate:

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

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

~~(f)(g)~~ All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.

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

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

~~(i)(j)~~ It shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the licensee within five days of notice that the

assignment has been terminated or a demand by the licensee to return the license.

Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187; 143B-289.52.

15A NCAC 030 .0112 FOR-HIRE LICENSE REQUIREMENTS

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

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

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

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

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

Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 113-181; 143B-289.52.

SECTION .0200 – SHELLFISH LEASES AND FRANCHISES

15A NCAC 030 .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

(a) For the purpose of this Section:

- (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages, racks, bags, or floats.
- (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using cages, racks, bags, or floats.
- (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish

seed or authorized cultch materials on a shellfish lease or franchise.

- (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

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

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

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

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

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

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

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

(f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.2:

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

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

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

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

- (1) ~~Only only~~ shellfish ~~marketed, planted, planted~~ or produced as defined in ~~15A-NCAC 03I.0104~~ as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" Paragraph (a) of this Rule shall be included in the annual shellfish lease and franchise production reports required by Rule .0207 of this Section.
- (2) ~~If~~ if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as planting effort on only one lease or franchise.
- (3) ~~Production and marketing~~ production information and planting effort information

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

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

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

- (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
- (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.

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

- (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
- (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
- (C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
- (D) for a shellfish bottom lease or franchise issued an extension period

under Rule .0208 of this Section, over the most recent five-year period.

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

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

- (1) Paragraphs (d), (e), (f), and (g) of this Rule;
- (2) Rule .0204 of this Section; and
- (3) Rule .0503(a) of this Subchapter.

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52; S.L. 2019-37, s. 3.

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

15A NCAC 030 .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES

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

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

SECTION .0500 - PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

- (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of attorney shall provide the following information:
 - (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the application and, if the applicant is not appearing before a license agent or the designated Division of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
 - (2) a current picture identification of the applicant, responsible party, or person holding a power of attorney, acceptable forms of which shall include driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military

identification card, resident alien card (green card), or passport or, if applying by mail, a copy thereof;

- (3) for permits that require a list of designees, the full names and dates of birth of the designees of the applicant who will be acting pursuant to the requested permit;
- (4) certification that the applicant and his or her designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) for permit applications from business entities:
 - (A) the business name;
 - (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
 - (C) the name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) for a corporation applying for a permit in a corporate name, the current articles of incorporation and a current list of corporate officers;
 - (E) for a partnership that is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) for business entities other than corporations, copies of current assumed name statements if filed with the Register of Deeds office for the corresponding county and copies of current business privilege tax certificates, if applicable; and

(6) additional information as required for specific permits.

- (b) A permittee shall hold a valid:
 - (1) Standard or Retired Standard Commercial Fishing License in order to hold:
 - (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
 - (B) a Permit for Weekend Trawling for Live Shrimp; or
 - (C) a Pound Net Set Permit.
- The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.
- (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries under a quota or allocation for that category.
 - (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall be eligible to

hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

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

- (1) Depuration Permit;
- (2) ~~Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
- (3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or
- (4) ~~Permit to Transplant Prohibited (Polluted) Shellfish; or~~
- (5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as provided in G.S. 113-169.2.

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

- (1) Depuration Permit; or
- (2) ~~Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
- (3)(2) Permit to Transplant Oysters from Seed Oyster Management ~~Areas;~~ or Areas.
- (4) ~~Permit to Transplant Prohibited (Polluted) Shellfish.~~

(f) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(g) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the following types of gear for an initial permit and at intervals of three consecutive license years thereafter:
 - (A) a gill net;
 - (B) a trawl net; or
 - (C) a beach seine.

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

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear

Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses, or assignments held by that person.

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

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

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

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

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

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

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

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

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

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

Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

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

- (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It shall be unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director;
 - (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine resources taken pursuant to an Aquaculture Collection Permit; or
 - (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year on the form provided by the Division of Marine Fisheries, stating the amount and disposition of marine and estuarine resources collected under authority of an Aquaculture Collection Permit.
- ~~(3) Lawfully permitted shellfish-relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection Permit issued by the Fisheries Director.~~
- ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on a calendar year basis.
- ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to an Aquaculture Collection Permit at the time of application.
- (b) Atlantic Ocean Striped Bass Commercial Gear Permit:
 - (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired Standard Commercial Fishing licenses, or assignments.
- (c) Blue Crab Shedding Permit: It shall be unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Coastal Recreational Fishing License Exemption Permit:
 - (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental impairment;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card;
 - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with educational institutions; and
 - (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

For the purpose of this Paragraph, educational institutions include high schools and other secondary educational institutions.
- (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and physical location of the organized fishing event for which the exemption is granted and the duration of the permit shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the following, in addition to the information required in Rule .0501 of this Section, is submitted to the Fisheries Director, in writing, at least 30 days prior to the event:
 - (A) the name, date, time, and physical location of the event;
 - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
 - (C) the cost or requirements, if any, for an individual to participate in the event; and
 - (D) an estimate of the number of participants.
- (e) Dealer permits for monitoring fisheries under a quota or allocation:
 - (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a fish dealer issued such permit to fail to:
 - (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine Fisheries, the previous day's landings for the permitted fishery to the Division.

- Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronically mail the required information, the permittee shall call in the previous day's landings to the Division;
 - (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
 - (D) contact the Division daily, regardless of whether a transaction for the fishery for which a dealer is permitted occurred; and
 - (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Atlantic Ocean Flounder Dealer Permit:
- (A) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (4) Spiny Dogfish Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.
- (5) Striped Bass Dealer Permit:
- (A) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) the Atlantic Ocean;
 - (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; or
 - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a valid Division of Marine Fisheries-issued tag for the applicable area affixed through the mouth and gill cover or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the Division offices. The Division shall specify the quantity of tags to be issued based on historical striped bass landings. It shall be unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (f) Horseshoe Crab Biomedical Use Permit:
- (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
 - (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries, due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, a statement of percent mortality up to the point of release, the harvest method, the number or percent of males and females, and the disposition of bled crabs prior to release.
 - (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management

Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at <http://www.asmfc.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, at no cost.

(g) Permit for Weekend Trawling for Live Shrimp:

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

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

(i) Scientific or Educational Activity Permit:

- (1) It shall be unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and possession allowances approved by the Division of Marine Fisheries.
- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities

conducted by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.

- (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit an annual report on collections and, if authorized, sales to the Division, due on December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
 - (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license for such sale;
 - (B) an authorization stated on the permit for such sale; and
 - (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
 - (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific or Educational Activity Permit at the time of application.
 - (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 ~~not~~ no later than 24 hours prior to use of the permit, specifying activities and location.
- (j) Under Dock Oyster Culture Permit:
- (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
 - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
 - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j), demonstrating the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
 - (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0117 OYSTER SANCTUARIES

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

- (1) Pamlico Sound area:
 - (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
 - (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
 - (c) Pea Island: within the area described by a line beginning at a point ~~35° 05.4760' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 36.7998' W; running southerly to a point ~~35° 05.4760' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 36.7998' W; running westerly to a point ~~35° 05.3680' N - 76° 23.4040' W~~ 35° 39.8400' N - 75° 37.0800' W; running northerly to a point ~~35° 05.3680' N - 76° 23.5370' W~~ 35° 40.0800' N - 75° 37.0800' W; running easterly to the point of beginning.
 - (d) Long Shoal: within the area described by a line beginning at a point ~~35° 33.8600' N - 75° 49.9000' W~~ 35° 33.8600' N - 75° 49.7670' W; running southerly to a point ~~35° 33.8600' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.7670' W; running westerly to a point ~~35° 33.7510' N - 75° 49.7670' W~~ 35° 33.7510' N - 75° 49.9000' W; running northerly to a point ~~35° 33.7510' N - 75° 49.9000' W~~ 35° 33.7510' N - 75° 49.9000' W

- (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.
- (f) Gull Shoal: within the area described by a line beginning at a point 35° 23.4520' N - 75° 58.0533' W; running southerly to a point 35° 22.9481' N - 75° 58.0721' W; running westerly to a point 35° 22.9596' N - 75° 58.5359' W; running northerly to a point 35° 23.4638' N - 75° 58.5173' W; running easterly to the point of beginning.
- (~~f~~)(g) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
- (~~g~~)(h) West Bluff: within the area described by a line beginning at a point ~~35° 18.3160' N - 76° 10.2960' W~~ 35° 18.3160' N - 76° 10.0690' W; running southerly to a point ~~35° 18.3160' N - 76° 10.0690' W~~ 35° 18.1290' N - 76° 10.0690' W; running westerly to a point ~~35° 18.1290' N - 76° 10.0690' W~~ 35° 18.1290' N - 76° 10.2960' W; running northerly to a point ~~35° 18.1290' N - 76° 10.2960' W~~ 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
- (~~h~~)(i) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
- (~~i~~)(j) Swan Island: within the area described by a line beginning at a point ~~35° 05.6170' N - 76° 27.5040' W~~ 35° 05.6414' N - 76° 26.7651' W;

running southerly to a point ~~35° 05.6020' N - 76° 26.7650' W~~ 35° 05.4846' N - 76° 26.7638' W; running westerly to a point ~~35° 05.4850' N - 76° 26.7640' W~~ 35° 05.4992' N - 76° 27.5033' W; running northerly to a point ~~35° 05.4990' N - 76° 27.5030' W~~ 35° 05.6554' N - 76° 27.5041' W; running easterly to the point of beginning.

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

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

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

(2) Neuse River area:

(a) Little Creek: within the area described by a line beginning at a point ~~35° 02.6940' N - 76° 30.9840' W~~ 35° 02.6940' N - 76° 30.7940' W; running southerly to a point ~~35° 02.6940' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.7940' W; running westerly to a point ~~35° 02.5380' N - 76° 30.7940' W~~ 35° 02.5380' N - 76° 30.9840' W; running northerly to a point ~~35° 02.5380' N - 76° 30.9840' W~~ 35° 02.6940' N - 76° 30.9840' W; running easterly to the point of beginning.

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

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0300 – SANITATION OF SHELLFISH - GENERAL

15A NCAC 18A .0301 DEFINITIONS

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

(1) "Adulterated" ~~means the following:~~ means:

(a) ~~Any~~ any shellfish that have been harvested from ~~prohibited areas;~~ polluted areas as defined in 15A NCAC 03I .0101;

(b) ~~Any~~ any shellfish that have been shucked, packed, or otherwise processed in a plant ~~which that~~ which that has not been permitted by the Division of Marine Fisheries in accordance with these rules or by another state shellfish control "authority" as defined in the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section I: Purposes and Definitions, in accordance with these Rules; This definition is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost;

(c) any shellfish that may have been contaminated by flood waters in accordance with Rule .0405 of this Subchapter;

~~(e)~~(d) ~~Any~~ any shellfish ~~which that~~ which that exceed the ~~bacteriological~~ bacteriological standards in Rule .0430 of this Subchapter; and

~~(d)~~(e) ~~Any~~ any shellfish ~~which are that~~ which are that have ~~been~~ been deemed to be an imminent ~~hazard;~~ hazard.

- (2) ~~"Approved area" means an area determined suitable for the harvest of shellfish for direct market purposes.~~
- (3) ~~"Bulk shipment" means a shipment of loose shellstock.~~
- (4) ~~"Buy boat or buy truck" means any boat which that complies with Rule .0419 of this Subchapter or truck which complies with Rule .0420 of this Subchapter that is used by a person permitted under these Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.~~
- (5)(2) "Certification number" means the unique identification number assigned by the state shellfish dealer agency to each certified shellfish ~~dealer.~~ dealer for each location. It consists of a ~~one to five digit~~ one-to-five-digit number preceded by the ~~two-letter~~ two-letter state abbreviation and followed by the ~~two letter~~ two-letter symbol two-letter abbreviation designating the type of operation certified.
- (3) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- (6)(4) "Critical control point" means a point, ~~step~~ step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, ~~eliminated~~ eliminated, or reduced to acceptable levels.
- (7)(5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological~~ biological, or chemical parameter must be controlled at a critical control point to prevent, ~~eliminate~~ eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (8)(6) ~~"Depurate" or "Depuration" "deputation" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled means.~~ the process of reducing the pathogenic organisms that may be present in shellstock by using a controlled aquatic environment as the treatment process.
- (9)(7) ~~"Depuration facility" means the physical structure wherein depuration is accomplished, including all the appurtenances necessary to the effective operation thereof.~~ any establishment or place where the depuration of shellfish occurs by a shellfish dealer.
- (10)(8) ~~"Division" means the Division of Environmental Health or its authorized agent.~~ Marine Fisheries.
- (9) "Easily cleanable" has the same meaning as defined in the 2017 U.S. Food Code. This definition is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/fda-food-code/food-code-2017>, at no cost.
- (10) "Food contact surface" means the parts of equipment, including auxiliary equipment, that may be in contact with the food being processed, or that may drain into the portion of equipment with which food is in contact.
- (11) ~~"Food safety hazard" means any biological, chemical~~ chemical, or physical property that may cause a food to be unsafe for human consumption.
- (12) "Good repair" means maintained to function as designed and without defect.
- (12)(13) ~~"HACCP plan" means a written document that delineates the procedures a shellfish dealer follows to implement food safety controls.~~
- (13)(14) ~~"Hazard analysis critical control point (HACCP)" means a system of inspection, control~~ control, and monitoring measures initiated by a shellfish dealer to identify microbiological, ~~chemical~~ chemical, or physical food safety hazards ~~which that~~ are likely to occur in shellfish products produced by the dealer.
- (14)(15) ~~"Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish meat from the shell.~~
- (15)(16) ~~"Imminent hazard" means a situation which is likely to cause an immediate threat to human life, and immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.~~ has the same meaning as defined in G.S. 130A-2.
- (14)(17) "In-shell product" means non-living, processed shellfish with one or both shells present.
- (16)(18) ~~"Misbranded" means the following: as defined in G.S. 106-30 shall include any shellfish that are not labeled in compliance with these Rules.~~
- (a) ~~Any shellfish which are not labeled with a valid identification number awarded by regulatory authority of the state or territory of origin of the shellfish; or~~
- (b) ~~Any shellfish which are not labeled as required by these Rules.~~
- (19) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (17) ~~"Operating season" means the season of the year during which a shellfish product is processed.~~
- (18) ~~"Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.~~

PROPOSED RULES

- (20) "Pests" means animals or insects, including dogs, cats, birds, rodents, flies, and larvae.
- (21) "Plant" means the establishment or place where shellfish processing occurs by shellfish dealers.
- (22) "Processing" or "processed" means any activity associated with the handling, shucking, freezing, packing, labeling, or storing of shellfish in preparation for distribution. This includes the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor.
- (19) ~~"Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.~~
- (20)(23) ~~"Recall procedure" means the detailed procedure the permitted shellfish dealer will use to retrieve product from the market when it is determined that the product may not be safe for human consumption as determined by the State Health Director, is adulterated or misbranded.~~
- (21) ~~"Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.~~
- (22)(24) ~~"Repacking plant" means a shipper, the establishment or place where a shellfish dealer, other than the original shucker-packer, who repacks shucked shellfish into other containers for delivery to the consumer, containers.~~
- (23)(25) ~~"Reshipper" means a shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers, person that purchases shellfish from a shellfish dealer and sells the product without repacking or relabeling to another shellfish dealer, wholesaler, or retailer.~~
- (26) "Responsible individual" means the individual present at a shellfish dealer that is the supervisor at the time of the inspection. If no individual is the supervisor, then any employee is the responsible individual.
- (24) ~~"Sanitary survey" means the evaluation of factors having a bearing on the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.~~
- (25)(27) ~~"Sanitize" means the a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619, has the same meaning as defined in 21 CFR 110.3, which is incorporated by reference including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter->~~
- ~~I/subchapter-B/part-110/subpart-A/section-110.3, at no cost.~~
- (26)(28) "SELL BY date" means a date conspicuously placed on a container or tag by which a consumer is informed of the latest date the product will remain suitable for sale.
- (27)(29) ~~"Shellfish" means oysters, mussels, scallops scallops, and all varieties of clams. However, clams, whether shucked or in the shell, fresh, frozen, whole, or in part, the term The requirements of Sections .0300 through .0800 of this Subchapter shall not include apply to scallops when if the final product is the shucked adductor muscle only.~~
- (30) "Shellfish dealer" means a plant to which a Shellfish Dealer Permit and Certificate of Compliance is issued by the Division for the activities of shellstock shipping, shucking or packing, repacking, reshipping, or depuration.
- (28)(31) "Shellstock" means any live molluscan shellfish which that remain in their shells.
- (29)(32) "Shellstock conveyance" means all trucks, vessels, trailers, or other conveyances used to transport shellstock.
- (30) ~~"Shellstock dealer" means a person who buys, sells, stores, or transports or causes to be transported shellstock which was not obtained from a person permitted under these Rules.~~
- (31)(33) "Shellstock plant" means any establishment or place where shellstock are washed, packed, or otherwise prepared for sale, sale by a shellfish dealer.
- (32)(34) ~~"Shucking and packing plant" means any establishment or place where shellfish are shucked and packed for sale, sale by a shellfish dealer.~~
- (35) "Use" means employ, set, operate, or permit to be operated or employed.
- (33)(36) ~~"Wet storage" means the temporary placement storage by a shellfish dealer of shellstock from approved areas, a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter, in containers or floats in natural bodies of water water, or in tanks containing natural or synthetic sea water, water at any permitted land-based activity or facility.~~

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

15A NCAC 18A .0302 PERMITS

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

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

- (b) It shall be unlawful to operate as a ~~shellstock~~ shellfish dealer without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.
- (c) It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.
- (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.
- (e) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (f) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with all applicable Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible ~~person~~ individual shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (g) All permits shall be posted in a conspicuous place in the facility.
- (h) All permits shall expire on April 30 of each year and are non-transferrable.
- (i) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.
- (j) A permit may be revoked or suspended in accordance with 15A NCAC 030 .0504.

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

15A NCAC 18A .0305 APPEALS PROCEDURE

Authority G.S. 130A-230.

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0401 APPLICABILITY OF RULES

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

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

15A NCAC 18A .0402 GENERAL REQUIREMENTS FOR OPERATION

- ~~(a) During the operating season the plant shall be used for no purpose other than the handling of shellfish. All unnecessary equipment and materials shall be removed from the plant and the floors kept clear for thorough cleaning.~~
- ~~(b)(a) All floors, walls, shucking benches and stools, shucking blocks, tables, skimmers, blowers, colanders, buckets, or any~~

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

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

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

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

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

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

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

15A NCAC 18A .0403 SUPERVISION AND TRAINING

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

(b) The shellfish dealer shall ensure that all employees that manufacture, process, pack, or hold food obtain training in the principles of food hygiene and food safety, including the

importance of employee health and personal hygiene, in accordance with 21 CFR 117.4, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-117/subpart-A/section-117.4> at no cost. Employees shall complete the training within 30 days following the initial hire date. The shellfish dealer or responsible individual shall maintain a record of the completed training.

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

15A NCAC 18A .0404 CONSTRUCTION

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

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

15A NCAC 18A .0405 PLANT LOCATION FACILITY FLOODING

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

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

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

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0406 FLOORS

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

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

15A NCAC 18A .0407 WALLS AND CEILINGS

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

(a) Walls and ceilings in areas where shellfish are stored, handled, processed, or packaged or where food handling equipment or packaging materials are stored shall be constructed of smooth, easily cleanable, non-corrosive, impervious material. The walls

and ceilings in these areas shall also be light-colored, such as white in color, so that unclean surfaces can be detected.

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

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

15A NCAC 18A .0408 LIGHTING

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

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

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

15A NCAC 18A .0409 VENTILATION

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

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

15A NCAC 18A .0410 FLY PEST CONTROL

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

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

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

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

15A NCAC 18A .0411 RODENT AND ANIMAL CONTROL

Authority G.S. 130A-230.

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

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

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

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

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

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

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

15A NCAC 18A .0413 WATER SUPPLY

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

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

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

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

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

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

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

15A NCAC 18A .0414 TOILET FACILITIES

~~Separate and convenient toilet facilities shall be provided for each sex employed and shall comply with the N.C. State Building Code, Volume 2, Plumbing. Floors, walls, and ceilings shall be smooth, easily cleanable and kept clean. Fixtures shall be kept~~

~~clean. All toilet wastes and other sewage shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on site sewage disposal system approved by the Department in accordance with G.S. 130A-335.~~

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

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

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

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

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

15A NCAC 18A .0415 WASTE DISPOSAL PREMISES

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

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

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

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

15A NCAC 18A .0416 PERSONAL HYGIENE

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

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

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

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

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

(e) All persons An individual known to be a carrier of any disease which that can be transmitted through the handling of shellfish or who have has an infected wound or open lesion on any exposed

portion of ~~their bodies~~ the body shall be prohibited from handling ~~shellfish~~ shellfish or coming into contact with food contact surfaces.

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

15A NCAC 18A .0417 LOCKERS EMPLOYEES' PERSONAL ARTICLES

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

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

15A NCAC 18A .0418 SUPPLY STORAGE

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

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

- ~~(1) pesticides and rodenticides;~~
- ~~(2) detergents, sanitizers, and cleaning agents; and~~
- ~~(3) caustic acids, polishes, and other chemicals.~~

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

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

15A NCAC 18A .0419 HARVEST BOATS VESSELS AND VEHICLES

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

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

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

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

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

15A NCAC 18A .0420 TRANSPORTING SHELLSTOCK SHELLFISH

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

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

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

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

15A NCAC 18A .0421 DAILY-RECORD RECORDS

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

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

- ~~(1) harvester name;~~
- ~~(2) harvest area;~~
- ~~(3) time of the start of harvest;~~
- ~~(4) quantity and type of shellfish received;~~
- ~~(5) time shellfish were received; and~~
- ~~(6) time shellfish were mechanically refrigerated.~~

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

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

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

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

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

15A NCAC 18A .0422 SHELLSTOCK CLEANING

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

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

15A NCAC 18A .0423 SALE OF LIVE SHELLSTOCK (READOPTED WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 18A .0424 SHELLFISH RECEIVING

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

- (1) any shellfish shellstock from:
 - (a) a licensed shellfish harvester unless unless:
 - (i) the container or package bears the harvest tag ~~or label~~ required by these Rules, as required in Rule 15A NCAC 03K .0109 and in accordance with the HACCP plan; and
 - (ii) the shellstock was harvested from a growing area in the open status and classified as "approved" or "conditionally approved" as defined in Rule .0901 of this Subchapter and as indicated on the harvest tag; or

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

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

- (a) it is accompanied by the documentation required in Rule .0421(c) of this Section; and
- (b) the shellfish temperature and other critical limits are in compliance with the HACCP plan.

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

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

(a) For the purpose of this Rule:

- (1) "bulk shipment" shall mean a shipment of a shellstock lot between shellfish dealers.
- (2) "shellstock lot" shall mean a single type of bulk shellstock or containers of shellstock of no more than one day's harvest from a single growing area harvested by one or more harvesters.

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

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

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

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

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

15A NCAC 18A .0427 SHELLSTOCK SHELLFISH STORAGE

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

(a) It shall be unlawful to fail to keep shellstock and in-shell product under mechanical refrigeration at a temperature of 45°F

or below unless otherwise required by proclamation issued under the authority of 15A NCAC 03K .0110 or otherwise specified in the HACCP plan.

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

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

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

15A NCAC 18A .0428 SAMPLING AND TESTING

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

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

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

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

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

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

(c) If voluntary disposal of adulterated or misbranded shellfish or shellfish products is alternatively chosen by the shellfish dealer, responsible individual, or other person or facility specified in Rule

.0401 of this Section, the product disposal shall be observed by a Division employee.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0430 BACTERIOLOGICAL AND CONTAMINATION STANDARDS

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

- (1) the concentration of Escherichia coli exceeds a Most Probable Number (MPN), as defined in Rule .0901 of this Subchapter, of 230 per 100 grams of sample;
- (2) the total bacteria count, as determined by a standard plate count, exceeds 500,000 colony-forming units, as defined in Rule .0901 of this Subchapter; or
- (3) the shellfish contain any contaminant that renders it unsafe for human consumption in accordance with the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

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

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

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

- (1) "Consumer Advisory
Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach

or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor ~~immediately.~~ immediately.; or

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

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

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

15A NCAC 18A .0433 HAZARD ANALYSIS

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

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

15A NCAC 18A .0434 HACCP PLAN

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

- (1) ~~List~~ list the food safety hazards that are reasonably likely to occur;
- (2) ~~List~~ list the critical control points for each of the food safety hazards;
- (3) ~~List~~ list the critical limits that must be met for each of the critical control points;
- (4) ~~List~~ list the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;
- (5) ~~List~~ list any corrective action plans to be followed in response to deviations from critical limits at critical control points;

- (6) ~~Provide~~ provide a record keeping system that documents critical control point monitoring; and
- (7) ~~List~~ list the verification procedures, and frequency thereof, that the dealer will use.

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

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

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

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

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

- (1) a reassessment of the plan when a change occurs that could affect the hazard analysis, and a review of any consumer complaints that have been received; and
- (2) a review, including signing and dating by the trained individual or responsible individual, of the records that document the monitoring of critical control points, the taking of corrective actions, and the calibrating of any process-monitoring instruments. This review shall occur within one week of the day that the records are made.

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

- (1) the name and location of the dealer;
- (2) the date and time of the activity that the record reflects;
- (3) the signature or initials of the individual performing the operation; and
- (4) the identity of the product and the production code, if any.

Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0435 SANITATION MONITORING REQUIREMENTS

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

- (1) ~~Safety~~ safety of water;
- (2) ~~Condition~~ condition and cleanliness of food contact surfaces;
- (3) ~~Prevention~~ prevention of ~~cross-contamination;~~ cross-contamination;
- (4) ~~Maintenance~~ maintenance of hand ~~sanitizing~~ sanitizing, and toilet facilities;
- (5) ~~Protection~~ protection of shellfish, shellfish packaging ~~materials~~ materials, and food contact surfaces from ~~adulteration;~~ becoming adulterated;
- (6) ~~Proper~~ proper labeling, ~~storage~~ storage, and use of toxic compounds;
- (7) ~~Control~~ control of employees with adverse health conditions; and
- (8) ~~Exclusion~~ exclusion of pests from the facility.

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

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

15A NCAC 18A .0436 MONITORING RECORDS

Authority G.S. 130A-230.

15A NCAC 18A .0437 IN-SHELL PRODUCT

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

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

- (1) the shellfish dealer's name, address, and certification number assigned by the shellfish control agency in the state of the shellfish dealer's location;
- (2) the original shipper's certification number, except if the in-shell product is depurated, the original shipper's certification number is not required;
- (3) a "SELL BY DATE" that indicates the shelf-life or the words "BEST IF USED BY" followed by a date when the product would be expected to reach the end of its shelf-life. The date shall include month, day, and year;
- (4) if the in-shell product is depurated, the depuration cycle number or lot number;

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

(6) the type and quantity of in-shell product; and
(7) the following statement in bold type on each tag or label: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) _____." OR "THIS LABEL IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RELABELED AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) _____."

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

- (1) "Consumer Advisory Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."
- (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

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

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

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

15A NCAC 18A .0438 INSPECTIONS AND COMPLIANCE SCHEDULE

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

- (1) the deficiency shall be corrected by the shellfish dealer during that inspection; or
- (2) the shellfish dealer shall immediately cease production affected by the deficiency.

If the shellfish dealer fails to correct the deficiency during the inspection, the Division shall initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504. For the purpose of this Rule, "critical deficiency" shall mean a condition or practice that results in the production of a shellfish product that is adulterated or presents a threat to the health or safety of the consumer.

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

- (1) embargo or destroy adulterated shellfish in accordance with Rule .0429 of this Section;
- (2) initiate a recall of adulterated shellfish; and
- (3) notify enforcement officials for the United States Food and Drug Administration, as well as shellfish control authorities in states that are known to have received adulterated shellfish.

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

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

- (1) revise the existing compliance schedule;
- (2) initiate the suspension or revocation process for the Shellfish Dealer Permit and Certificate of Compliance as set forth in 15A NCAC 03O .0504; or
- (3) seek other administrative remedies.

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

Authority G.S. 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52.

15A NCAC 18A .0439 RECALL PROCEDURE

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

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

SECTION .0500 - OPERATION OF SHELLSTOCK PLANTS AND RESHIPERS

15A NCAC 18A .0501 GENERAL REQUIREMENTS FOR SHELLSTOCK PLANTS AND RESHIPERS

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

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

15A NCAC 18A .0502 GRADING SHELLSTOCK AND COMMINGLING

(a) For the purpose of this Rule:

- (1) "commingling" shall mean the act of combining different lots of shellfish harvested on different days in the same growing area or combining different lots of shellstock harvested from different growing areas.
- (2) "lot" shall mean clams from one day's harvest, from a single growing area, harvested by one or more harvesters.

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

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

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

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

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

15A NCAC 18A .0503 GRADER

Authority G.S. 130A-230.

15A NCAC 18A .0504 RESHIPERS

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

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

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

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

SECTION .0600 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND REPACKING PLANTS

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

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

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

15A NCAC 18A .0602 SEPARATION OF OPERATIONS

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

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

15A NCAC 18A .0603 HOT WATER SYSTEM

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

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

15A NCAC 18A .0604 HANDWASHING FACILITIES

Authority G.S. 130A-230.

15A NCAC 18A .0605 DELIVERY WINDOW OR SHELF

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

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

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

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

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

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

15A NCAC 18A .0607 SHUCKING BENCHES

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

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

15A NCAC 18A .0608 EQUIPMENT CONSTRUCTION

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

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

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

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

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

15A NCAC 18A .0609 SANITIZING EQUIPMENT

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

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

15A NCAC 18A .0610 EQUIPMENT SANITATION

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

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

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

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

15A NCAC 18A .0611 EQUIPMENT STORAGE

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

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

15A NCAC 18A .0612 ICE

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

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

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

15A NCAC 18A .0613 SHELLFISH SHUCKING

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

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

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

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

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

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

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

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

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

15A NCAC 18A .0614 CONTAINERS

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

(b) ~~Shucked shellfish shall be packed and shipped in containers, sealed so that tampering can be detected. Each individual container shall have permanently recorded container, so as to be conspicuous, the shucker/packer's, repacker's, or distributor's~~

~~name and address, and the shucker/packer's or repacker's certification number. The shucker/packer's or repacker's name and address and certification number shall be permanently and visibly recorded on the label of each container used for shucked shellfish.~~

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

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

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

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

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

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

15A NCAC 18A .0615 SHELLFISH COOLING

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

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

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

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

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

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

15A NCAC 18A .0616 SHELLFISH FREEZING

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

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

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

15A NCAC 18A .0617 SHIPPING

Authority G.S. 130A-230.

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

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

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

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

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

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

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

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

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

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

- (j) ~~Sanitizing~~. All heat shock tanks shall be sanitized immediately before starting each day's operation.
- (k) The procedure for the heat shock process shall be posted in a location that can be viewed by employees to help ensure the correct procedure can be followed.

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

15A NCAC 18A .0619 REPACKING OF SHELLFISH

- (a) If repacking is practiced, it shall be ~~done strictly conducted~~ in accordance with all the requirements ~~stipulated~~ for shucking and packing plants in the rules of this Section except those for requirements related to shucking.
- (b) The shucked shellfish to be repacked shall be received at the repacking plant ~~in approved shipping containers~~ at a temperature of ~~32° - 40°F (0° - 4°C)~~ 45°F or less.
- (c) Shellfish shall not be repacked more than one time.
- (d) The temperature of the shellfish shall not exceed an internal temperature of 45°F (7°C) for more than two hours during the repacking process.
- (e) ~~Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are repacked shall be dated to show the original shucking date and repacking date, which will be preceded by the letter (R).~~ Containers of repacked shellfish shall be repacked and labeled in accordance with Rule .0614 of this Section, except that the original date of shucking shall be added to the new repacked container or the original date of shucking shall be used in establishing the "SELL BY" or "BEST IF USED BY" date.
- (f) Repackers shall keep ~~accurate~~ records indicating the source from which shellfish were purchased, the date packed, the date of purchase, ~~the area within the state or territory from which the shellfish were harvested,~~ and the names and addresses of ~~persons shellfish dealers~~ to whom ~~the~~ shellfish were sold.

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

15A NCAC 18A .0620 SHELLFISH THAWING AND REPACKING

- (a) Frozen shellfish shall be thawed ~~under temperatures not to exceed 45° F (7° C)~~ at a temperature of 45°F or less.
- (b) Shellfish held for thawing shall be separated from other shellfish.
- (c) Thawed shellfish shall not exceed ~~45° F (7° C)~~ 45°F for more than two hours during the repacking process.
- (d) Containers of repacked, thawed shellfish shall be labeled as required in Rule .0619 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.
- (e) Thawed ~~shellfish, which shellfish that~~ remain in original ~~containers, containers~~ shall be labeled as required in Rule .0614 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.

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

15A NCAC 18A .0621 RECALL PROCEDURE

Authority G.S. 130A-230.

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

15A NCAC 18A .0701 GENERAL REQUIREMENTS FOR DEPURATION

- (a) ~~The Rules in Section .0400 shall apply for the operation of depuration facilities. In addition to and to the extent not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission rules, requirements for depuration shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish chapter titled "Depuration", which is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material is available online at:~~ <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.
- (b) All laboratory analyses used to evaluate the effectiveness of the depuration process shall be performed by a laboratory found by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA-certified State Shellfish Laboratory Evaluation Officer to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP).
- (c) If there is an immediate or ongoing critical need for a method for the analysis of depuration process water and shellfish that are used to evaluate the effectiveness of the depuration process and no method approved for use within the NSSP exists, the following may be used:
 - (1) a validated Association of Analytical Communities, Bacteriological Analysis Manual, or Environmental Protection Agency method; or
 - (2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish.

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

**15A NCAC 18A .0702 FACILITY SUPERVISION
15A NCAC 18A .0703 FACILITY DESIGN AND SANITATION**

Authority G.S. 130A-230.

15A NCAC 18A .0704 LABORATORY PROCEDURES

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

15A NCAC 18A .0705 FACILITY OPERATIONS
 15A NCAC 18A .0706 SHELLFISH SAMPLING PROCEDURES
 15A NCAC 18A .0707 DEPURATION PROCESS WATER CONTROL - SAMPLING PROCEDURES
 15A NCAC 18A .0708 DEPURATION TREATMENT PROCESS WATER - STANDARDS
 15A NCAC 18A .0709 DEPURATION - SHELLFISH MEAT STANDARDS
 15A NCAC 18A .0710 ULTRAVIOLET UNIT
 15A NCAC 18A .0711 SHELLSTOCK STORAGE
 15A NCAC 18A .0712 DEPURATION - TAGGING AND RELEASE OF SHELLFISH
 15A NCAC 18A .0713 DEPURATION - RECORDS

Authority G.S. 130A-230.

SECTION .0800 - WET STORAGE OF SHELLSTOCK

15A NCAC 18A .0801 GENERAL REQUIREMENTS FOR WET STORAGE OF SHELLSTOCK

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

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

- (1) Section @.01, .04, C(1)(a) is amended to read: "Except for a water source in accordance with Rule .0413 of this Subchapter, the quality of the surface source water prior to treatment shall meet, at a minimum, the bacteriological standards for the conditionally approved classification in the open status. Water classified as prohibited or restricted shall not be used as source water."
- (2) the following sections are not incorporated by reference and shall not apply: Sections @.01, .04, C(2)(a)(ii), @.01, .04, C(2)(b), @.01, .04, C(2)(c), and @.01, .04, C(2)(d).

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

15A NCAC 18A .0802 PLANT DESIGN: SANITATION: AND WET STORAGE
 15A NCAC 18A .0803 WET STORAGE WATER
 15A NCAC 18A .0804 SHELLSTOCK CLEANING
 15A NCAC 18A .0805 WET STORAGE TANKS
 15A NCAC 18A .0806 SHELLSTOCK CONTAINERS

Authority G.S. 130A-230.

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply to this Section.

- (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting of shellfish for direct market purposes.
- (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area with restricted tidal flow.
- (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as determined by a plate count.
- (4) "Commercial marina" means a marina that offers one or more of the following services: fuel, transient dockage, haul-out facilities, or repair services.
- (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent pollution but that may be used for harvesting shellfish for direct market purposes when management plan criteria are met.
- (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall be calculated by:
 - (a) calculating the arithmetic mean and standard deviation of the sample result logarithms (base 10);
 - (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
 - (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
 - (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the estimated 90th percentile.
- (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C plus or minus 0.2° C in a water bath.
- (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.

- (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats.
- (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and accumulated by shellstock.
- (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the two middle numbers when the sequence has an even number of numbers.
- (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish safe for human consumption.
- (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides, and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops when the final product is the shucked adductor muscle only.
- (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey and that is used to track the location where shellfish are harvested.

- (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish life.
- (24) "Shellstock" means live molluscan shellfish in the shell.
- (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area.
- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution and scheduled sufficiently far in advance to support random collection with respect to environmental conditions.

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

15A NCAC 18A .0906 RESTRICTED AREAS

- (a) Shellfish growing waters may be classified as restricted if:
 - (1) a sanitary survey indicates there are no significant point sources of pollution; and
 - (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.
- ~~(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300.~~
- ~~(c)~~(b) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300 and .0700.
- ~~(d)~~(c) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality does not exceed the following standards based on results generated using the systematic random sampling strategy:
 - (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100 milliliters;
 - (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100 milliliters;
 - (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
 - (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

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

MFC 2023-2024 Proposed Rules-Public Comments

Created	Name	Address: City	Address: State	Are your comments for or against the proposed rulemaking?	Please enter your comments on proposed changes to the rules and cite the rule or rules on which you are commenting.
8/2/2023 10:06	Chris Potter	Morehead City	North Carolina	Against	<p>If you pass the legislation as referenced below, I will sue. There is no wiggle room when it comes to freedom of speech; you do not get an inch. The Director and his/her team's delicate sensibilities do not trump my God-given rights to Freedom of Speech, recognized in the first amendment of the U.S.A to which North Carolina belongs. Attempts to limit speech are in direct violation of my rights. I would now like to celebrate those rights by inviting the Director and team to lick my freedom-lovin' body and all it's parts.</p> <p>The following is the legislation I am opposed to: It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents²⁹ in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment³⁰ or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o),³¹ (t), and (u), including to:³² (1) harass;³³ (2) sexually harass, including making sexual connotations;³⁴ (3) oppose;³⁵ (4) impede;³⁶ (5) intimidate</p>
8/18/2023 17:49	John Williams	Leland	North Carolina	Against	I do not support shellfish leases you are taking our public shoreline away for profit. I do not support being bothered while in the act of fishing

**MARINE FISHERIES COMMISSION
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES
DIVISION OF MARINE FISHERIES
CENTRAL DISTRICT OFFICE, MOREHEAD CITY, N.C.
AUGUST 16, 2023, 6 PM**

Marine Fisheries Commission: Donald Huggins

Division of Marine Fisheries Staff: Catherine Blum, Marla Chuffo, Brian Gupton, Neil Kendrick, Elizabeth McCormick, Shawn Nelson, Brandi Salmon, Hope Wade, David Wallen, Jason Walsh, Travis Williams

Public: Christian Bayer, M.C. Hayes, Neal Register

Media: None

Marine Fisheries Commission member Donald Huggins, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 6 p.m. He explained that there are changes to 103 rules proposed by the Marine Fisheries Commission and the proposed effective date of these rules is April 1, 2024, unless the rules are automatically subject to legislative review per S.L. 2019-198. He said public comments on the proposed rules will be presented to the Marine Fisheries Commission at its November 2023 business meeting prior to its vote on final approval of the rules. He reviewed guidelines of the public hearing process and explained the hearing is a formal process to receive public comments only about the proposed rules as published in the *N.C. Register*.

Division staff member Catherine Blum reviewed the proposed rules by explaining the reason for proposed action as published in Volume 38, Issue 03 of the *N.C. Register*. She said the comment period for these 103 rules ends at 5 p.m. October 2, 2023. Mrs. Blum said comments may be submitted via U.S. mail to the Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557; written comments may also be submitted via an online form available on the Division of Marine Fisheries website, on the "2023-2024" proposed rules webpage.

Commissioner Huggins opened the floor for the public to provide comments.

Christian Bayer provided comments about shellfish relay. He said he has been participating in shellfish relay for years and his father has been participating in it for about 20 years. They have tried aquaculture for several years and have seen first hand how well it is not working, both on their own aquaculture farm and other nearby aquaculture farms. He said it is unacceptable to shut down something that has been working, namely shellfish relay. Mr. Bayer said he understands some people's concerns about it, but for no more people than are participating in the relay program and as many families benefit from it, he said it is the wrong path to discontinue it in the face of people trying to grow N.C. seafood in the N.C. oyster program. He said it needs to be understood where other people are coming from and he wants everyone to be aware of the situation, rather than just one person that may not see his point of view.

Hearing no further public comments on the proposed rules, Commissioner Huggins closed the hearing at 6:18 p.m.

/cb

N.C. Marine Fisheries Commission 2024-2025 Annual Rulemaking Cycle

May 2024

Time of Year	Action
February-July 2024	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 23, 2024	MFC votes on approval of Notice of Text for Rulemaking
Oct. 1, 2024	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Dec. 2, 2024	Public comment period held
November 2024	Public hearing held (details TBD)
February 2025	MFC votes on approval of permanent rules
April 2025	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2025	Earliest effective date of rules not subject to legislative review
May 1, 2025	Rulebook supplement available online
2026 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.

Issue Paper Review for May 2024 N.C. Marine Fisheries Commission Meeting

Issue Paper Title	Issue	Origination	Proposed Rules	Division of Marine Fisheries Recommendation
<p>INTERSTATE WILDLIFE VIOLATOR COMPACT ISSUE PAPER</p>	<p>The Interstate Wildlife Violator Compact is a voluntary interstate agreement that provides participating states with a mechanism to participate in a reciprocal program to: (1) promote compliance with the statutes, laws, administrative rules and regulations relating to management of wildlife resources in their respective states; and (2) provide for the fair and impartial treatment of wildlife violators operating within the participating states in recognition of the individual's right of due process and the sovereign status of a party state. North Carolina's participation in the Interstate Wildlife Violator Compact has been enacted into state law, so it must be implemented and enforced. Article 22B includes G.S. § 113-300.7, which requires the Wildlife Resources Commission and the Marine Fisheries Commission to adopt rules necessary to carry out the purpose of Article 22B. The Wildlife Resources Commission has adopted its rules. For the purposes of the Interstate Wildlife Violator Compact, "wildlife" includes marine and estuarine resources managed by the Marine Fisheries Commission and the Division of Marine Fisheries.</p>	<ul style="list-style-type: none"> • Chapter 113, Article 22B - Interstate Wildlife Violator Compact • Session Law 2008-120 • Session Law 2009-15 	<ul style="list-style-type: none"> • 15A NCAC 03O .0601-.0606 	<p>The Division of Marine Fisheries recommends the Marine Fisheries Commission adopt rules to comply with existing statutes and directives to enter into the Interstate Wildlife Violator Compact.</p>

Interstate Wildlife Violator Compact Issue Paper

April 18, 2024

I. ISSUE

Adopt N.C. Marine Fisheries Commission (MFC) rules to comply with the Interstate Wildlife Violator Compact (hereinafter, WVC).

II. ORIGINATION

The N.C. General Assembly enacted the WVC (Article 22B) in statute via Senate Bill 175 in 2008. The bill was signed into law on July 14, 2008, and became effective on October 1, 2008.

In 2009, House Bill 105 added the MFC and the N.C. Division of Marine Fisheries (DMF) to the WVC and all species of animals they protect or regulate to the definition of "wildlife". This act became effective on October 1, 2009. Article 22B includes G.S. § 113-300.7, which requires the N.C. Wildlife Resources Commission (WRC) and the MFC to adopt rules necessary to carry out the purpose of Article 22B.

III. BACKGROUND

The WVC is a voluntary interstate agreement that provides participating states with a mechanism to participate in a reciprocal program to: (1) promote compliance with the statutes, laws, administrative rules and regulations relating to management of wildlife resources in their respective states; and (2) provide for the fair and impartial treatment of wildlife violators operating within the participating states in recognition of the individual's right of due process and the sovereign status of a party state. North Carolina's participation in the WVC has been enacted into state law, so it must be implemented and enforced.

It is important to note that several terms in the WVC have definitions that differ for those found elsewhere in North Carolina. For the WVC, "wildlife" includes marine and estuarine resources, whereas G.S. 113-129(16) excludes marine and estuarine species. Likewise, suspension references include not just suspensions, but also any revocation, denial, withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license or permit. Another term defined in the WVC is "party state", which means any state that enacts legislation to become a member of the WVC. The use of "member state" throughout this paper and its proposed rules is intended to have the same meaning.

The WVC has a set of bylaws and an operations manual (see <http://www.deq.nc.gov/wildlifeviolatorcompact>). The WVC Operations Manual states the concept of a wildlife violator compact was first advanced in the early 1980s by western states discussing the format of existing documents related to motor vehicle operator licensing and enforcement. During the 1989 legislative session, compact legislation was passed into law in Colorado, Nevada, and Oregon. These three states formed the nucleus for the development of the operational procedures of the WVC. As of 2024, the WVC has 49 member states, with Hawaii in the process of joining the WVC; Massachusetts is working to implement the WVC. The Manual provides the original 1989 legislative text, which is similar to the N.C. legislation. The Manual also addresses procedural and administrative matters and describes the compact process.

The WVC Bylaws provide that each state shall have a representative appointed by the Chief of Law Enforcement or the licensing authority in the participating state. For North Carolina this role would be shared by the DMF and WRC or the DMF would have to rely on the WRC for representation. Each state or province shall have one vote in matters affecting the WVC and that vote shall be in person. There shall be an annual meeting conducted in conjunction with the fall meeting of the Association of Fish and Wildlife Agencies. The WVC shall vote annually to elect a Chair, Vice-chair, and Secretary. Officers shall serve no more than three consecutive terms. The board shall formulate necessary procedures for the administration of the WVC and develop uniform forms and data formats for transmittal of compact information. These procedures are consistent with the N.C. legislation, specifically G.S. 113-300.6 Article VII.

After the N.C. General Assembly agreed to enter the WVC, there were a number of concerns about implementation by the DMF. The first was how a suspension from recreational activities would affect a commercial license holder; specifically, whether commercial licenses would be considered at all and if the DMF and MFC could opt out of the WVC (D. Lupton, NCDMF (retired), personal communication). Additional concerns were that charging language or

violations are different from one state to another and may be difficult to apply in North Carolina. DMF staff reached back to lawmakers for clarity, but it is unclear if the DMF received a response (J. Kelley, NCDMF (retired), personal communication). Additionally, the WRC had to enact their rules before the MFC could enact theirs, consistent with the legislation (D. Lupton, NCDMF (retired), personal communication).

North Carolina's participation in the WVC gives N.C. agencies a mechanism to increase accountability on wildlife violators who have been suspended in other jurisdictions. The adoption of MFC rules would allow DMF to hold those wildlife violators accountable and provide more opportunity and flexibility for N.C. Marine Patrol officers to treat non-residents as they would an N.C. resident. By providing a mechanism to suspend licenses in outside jurisdictions, there is a consequence for those charged should they fail to appear in court or fail to comply, thus serving as a deterrent for wildlife violators from outside jurisdictions. In other words, adoption of MFC WVC rules would result in the N.C. Marine Patrol being able to treat all wildlife violators equally, regardless of their state residency.

WRC adopted rules to implement the WVC that became effective August 1, 2017. (See Appendix I.) These six rules codified requirements to ratify suspensions from other member states, report suspensions to the WVC, send notices to those affected, and to give guidance on how to rectify or appeal suspensions to those affected. Per G.S. § 113-300.7, the WVC administrator is to be appointed by the chair of the WRC in consultation with the chair of the MFC and DMF director. The WVC administrator for North Carolina serves at the pleasure of the WRC chair.

There are several terms used in reference to the WVC that are helpful for DMF and MFC stakeholders to understand. Many of these terms are defined or referred to in G.S. § 113-300.6.

- "Wildlife" includes all species of animals that are protected or regulated by the WRC, MFC or DMF. This includes marine and estuarine species, e.g., fish. This differs from the definition of "Wildlife" in G.S. § 113-129(16), which excludes marine and estuarine species.
- "Wildlife violation" means any cited violation of a law or rule enacted or adopted to manage wildlife resources.
- A wildlife violation conviction can result in a product suspension, which for DMF and MFC stakeholders refers to the suspension or revocation of a commercial or recreational fishing license or permit for which the DMF has enforcement authority. Suspension of recreational fishing licenses or permits can include a Coastal Recreational Fishing License ("CRFL") or a Recreational Commercial Gear License ("RCGL") under the MFC's authority but sold by the WRC. A wildlife violation can also result in the loss of the privilege to obtain a fishing license or permit.
- Ratification under the WVC for DMF and MFC stakeholders means for DMF to recognize a violation and subsequent product suspension from another WVC member state by applying equivalent consequences to fishing privileges in N.C. marine and estuarine waters. Technically, the DMF would only be ratifying a product suspension, not also the violation or violations that led to a product suspension.
- "Personal recognizance" means an agreement by a person made at the issuance of a wildlife citation that the person will comply with the terms of that citation. For example, the terms may include appearing before a judge at a later time and/or paying a fine.
- Failure to appear refers to a person that did not comply with the terms of their citation; for example, a person that did not pay their fine ahead of time or appear for their court date in front of the judge.
- Failure to comply refers to a person that did not comply with the terms of their citation or judgment; for example, a person that did not pay their fine on or after their court appearance, or did not complete all of their community service hours, serve time, or comply with their probation, etc.

Although the WRC's rules have been in place since 2017, efforts to develop proposed MFC rules and processes to enact the WVC have moved slowly as DMF staff have worked to address the concerns described above. Currently, with the WRC actively participating in the WVC but the MFC and DMF not participating, the DMF has no voice or knowledge of suspensions being ratified or entered by the WRC on behalf of North Carolina. At a minimum, by the MFC adopting rules and the DMF joining the WVC, the DMF would have the ability to enter suspensions and to gain knowledge of wildlife violators that have product suspensions (i.e., licenses and permits) so that N.C. Marine Patrol officers could act to address those violations. Currently, the WRC colonel is the WVC administrator for North Carolina, so the DMF would have to rely on the WRC to coordinate the process of ratifying violations under the WVC. The DMF Marine Patrol staff have begun discussions to develop internal processes with the WRC enforcement staff on ways to do this as efficiently as possible.

Table 1 provides examples of wildlife violations (including all species of animals that are protected or regulated by the DMF and the MFC) to help demonstrate some of the advantages of the MFC complying with the legislative mandate to participate in the WVC.

Table 1. Examples of wildlife violations and subsequent suspensions with and without the DMF and MFC's participation in the WVC.

Wildlife violation type leading to suspension ratified in WVC	Without DMF/MFC participation in WVC	With DMF/MFC participation in WVC
Citizen of another state convicted of fishing violation outside of North Carolina and receives saltwater license suspension (all saltwater products)	No mechanism for N.C. Marine Patrol to even be notified if WRC ratifies the commercial and recreational license suspension	Mechanism in place for N.C. Marine Patrol to coordinate with the WRC about a decision to ratify the commercial and recreational license suspension
Citizen of another state convicted of fishing violation in North Carolina	No mechanism for N.C. Marine Patrol to avoid arresting/bonding of wildlife violator	Mechanism in place to release that citizen on personal recognizance to comply with the terms of their citation after the fact
N.C. citizen that is a N.C. licensed commercial fisherman convicted of fishing violation (commercial or recreational) outside of North Carolina and receives suspension of all fishing licenses	No mechanism for N.C. Marine Patrol to even be notified if WRC ratifies commercial and recreational license suspension	Mechanism in place for N.C. Marine Patrol to coordinate with the WRC about decision to ratify commercial and recreational license suspension
Review of all violation types leading to suspensions ratified in WVC	No additional administrative burden to DMF staff	Additional administrative burden to DMF staff

The WVC provides for flexibility in addressing differences in charging language or violations in other states and how to apply them in North Carolina and impacts to N.C. commercial license holders. The WVC provides a member state with latitude to apply suspensions only for similar offenses/license types, providing consideration for the variability for in-state charging penalties. As suspensions from member states are entered into the WVC database, they would be ratified or not ratified by the DMF based upon the similarity of the offense/license type as related to N.C. statute or rule, but the term of suspension would be set by the out-of-state jurisdiction. For example, if another member state entered a violation and subsequent saltwater license suspension of one year in the WVC, if the offense/license type as related to N.C. statute or rule was similar, the suspension for the other state would be ratified in North Carolina and the one-year suspension would be recognized for that person's N.C. marine and estuarine licenses and permits. For the inverse scenario, N.C. suspensions that are entered into the WVC would be reviewed by other member states as to the fit or similarity of a state's current statutes or rules, and member states would decide to ratify the N.C. suspension or not.

Violations charged by N.C. Marine Patrol officers span a range of levels depending on the violation and license type involved.

- G.S. 14-1. Felonies and misdemeanors defined. A felony is a crime which: (1) Was a felony at common law; (2) Is or may be punishable by death; (3) Is or may be punishable by imprisonment in the State's prison; or (4) Is denominated as a felony by statute. Any other crime is a misdemeanor.
- Misdemeanors (G.S. 14-3):
 - Class A1 misdemeanors carry a maximum sentence of 150 days in jail and a fine in an amount determined by the court.
 - The maximum penalty for a Class 1 misdemeanor is 120 days in jail and a fine in an amount determined by the court.
 - Class 2 misdemeanors carry up to 60 days in jail and a maximum fine of \$1,000.
 - A person convicted of a Class 3 misdemeanor faces up to 20 days' jail time and a \$200 fine.
- G.S. 14-3.1. Infraction defined; sanctions. (a) An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an

infraction is a penalty of not more than one hundred dollars (\$100.00). The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools. (b) The procedure for disposition of infractions is as provided in Article 66 of Chapter 15A of the General Statutes.

There are four levels of misdemeanor violations. Most marine fisheries-related violations are charged as a Class 3 misdemeanor under G.S. § 113-135; although repeat offenses are elevated to a Class 2 misdemeanor, while Coastal Recreational Fishing License violations under G.S. § 113-174.1(a) are charged as infractions. Some more serious violations are charged as A1 misdemeanors under G.S. § 113-187, including those that pose a risk to public health, such as commercial harvesting of shellfish from polluted waters, or directly damaging natural resources, such as trawling in a primary nursery area. The most severe fisheries-related charge is taking or possessing shellfish from a polluted area at night or taking shellfish from polluted waters within two years of being convicted of that same offense, each of which is charged as a Class I felony.

As with criminal charges, a violation supporting the more severe charges also carries a longer suspension and varies based upon the license type involved. For instance, a commercial license holder using a trawl net in closed waters would be charged under G.S. 113-187 (more severe penalty, Class A1 Misdemeanor), but a holder of a Recreational Commercial Gear License would be charged under G.S. 113-135 (less severe penalty, Class 3 Misdemeanor). The example of taking shellfish from a polluted area further highlights the options for determining a penalty depending on the egregiousness of the offense. If a person was charged under G.S. § 113-135 for a first offense for recreational harvest, there would be no suspension; if a person was charged under G.S. § 113-187 for a first offense there would be a one-year suspension; and if a person was charged under G.S. § 113-209 (felony; taking polluted shellfish at night or with prior conviction) there would be a revocation.

Convictions like those described above would be entered into the WVC database. Member states would then be able to apply suspensions for similar offenses/license types, so another member state may or may not ratify this suspension example in the same way or at all. However, the length or severity of a suspension may vary from other jurisdictions so the DMF would ratify as entered as prescribed in G.S. § 300.6 Article I (b)(4) (for convictions against a person whose home state was not the issuing state) and Article V (all member states recognizing the suspension by any other member state of a person's licenses and permits).

For a suspension for failure to appear or comply issued by a member state, the wildlife violator would have to comply with the suspending jurisdiction before North Carolina would reinstate their license. Most WRC suspensions are for a single violation and for that reason they only ratify certain suspensions that would result in a suspension in North Carolina. In contrast, DMF subject matter-based convictions are cumulative and could result in a suspension if there was more than one conviction within three years.

IV. AUTHORITY

G.S. § 113-134.	Rules.
G.S. § 113-174.	Definitions.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 113-300.5.	Short title.
G.S. § 113-300.6.	Governor to execute compact; form of compact.
G.S. § 113-300.7.	Appointment of Compact Administrator; implementation; rules; amendments.
G.S. § 113-300.8.	Violations.
G.S. § 143B-289.52.	Marine Fisheries Commission – powers and duties.
S.L. 2008-120.	AN ACT TO ENACT THE INTERSTATE WILDLIFE VIOLATOR COMPACT IN NORTH CAROLINA.
S.L. 2009-15.	AN ACT TO CLARIFY THAT THE INTERSTATE WILDLIFE VIOLATOR COMPACT INCLUDES VIOLATIONS OF MARINE RESOURCES LAW, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

V. DISCUSSION

House Bill 105 established a clear mandate for the MFC to implement the WVC. The WRC has enacted rules to implement the WVC and is currently administering the Act for the State. Complying with this legislative mandate

provides a wide range of benefits not only to the MFC and DMF, but also to the regulated public. Those benefits include:

- ensuring that N.C. residents issued citations in other jurisdictions can be released on personal recognizance like residents of member states;
- the ability to recognize reciprocal license suspensions, and suspensions for failure to appear in court or comply; and
- providing N.C. Marine Patrol officers with the flexibility to write non-resident violators a citation instead of arresting and bonding them.

It is not the current N.C. Marine Patrol policy to arrest all non-resident wildlife violators; officers would only arrest if they had reason to believe the wildlife violators would fail to appear in court or comply. But entering the WVC would give N.C. Marine Patrol officers increased confidence by knowing that if a wildlife violator does fail to appear in court there is recourse for the wildlife violator's license to be suspended in their home state. Agency benefits include:

- more time for patrol and less time processing wildlife violators;
- reduced burden on courts and jail facilities;
- improved public relations by not having to subject as many wildlife violators to bonding and incarceration;
- reduced failure to appear and non-compliance cases; and
- notice to wildlife violators that activities in any single member state can affect their privileges in all member states.

With the adoption of these rules by the MFC, the DMF would join the WRC in a reciprocal agreement representing 49 states to promote compliance with the statutes, laws, and rules/regulations relating to management of wildlife resources (including all species of animals that are protected or regulated by the DMF and the MFC). Suspensions that are entered into the WVC database by other states already impact Coastal Recreational Fishing Licenses (CRFL) because of the way most WRC licenses are packaged, such as sportsman's licenses or inland/coastal combinations. There are also instances of cross-agency suspensions when another member state suspends all products, and the WRC ratifies as such. The WRC could ratify a coastal/saltwater suspension or an all-product suspension (including commercial products) from another state that would trigger the suspension of a person's North Carolina coastal/saltwater products. This is problematic, as there is currently no mechanism by which DMF staff would be notified of the suspensions WRC would be ratifying. Conversely, a suspension that is warranted may not be ratified as the WRC may be unfamiliar with the charging or suspending language and license types, as WRC staff do not have access to the DMF database (Fisheries Information Network, or FIN) of commercial products a person possesses. Implementing the WVC would be the first step towards the DMF giving and receiving suspension information. The DMF would be able to enter suspensions and send notices to offenders independent of the WRC. A policy or an agreement between the agencies should also be considered and a Marine Fisheries representative should be assigned to oversee the flow of information between the agencies and notices to offenders.

Commercial licenses present another issue. Other states are split on whether commercial licenses are affected by WVC suspensions. The current WVC Compact Manager and Major of the Pennsylvania Game Commission, Michael Reeder, stated that this is left up to each individual state. The North Carolina legislation for the WVC does not distinguish between recreational and commercial licenses. Rather, G.S. § 113-300.6 (8) defines "license" to mean "any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state." By not excluding commercial licenses in the legislation, the General Assembly has opted to include commercial licenses in the WVC.

G.S. § 113-300.7 requires both the MFC and the WRC to adopt rules necessary to implement the WVC. The WVC Manual and G.S. § 113-300.6 can serve as a template for the DMF as the administrative and procedural blueprints for implementation of the WVC. The proposed MFC rules would establish conditions for non-residents who commit misdemeanor fishing violations in North Carolina that result in a license suspension and failure to comply with the terms of their citation. The proposed MFC rules would establish the standards for the DMF to carry out the purpose of Article 22B. The rules would impact the criminal and administrative processing of non-resident wildlife violators and would impact the administrative procedures for resident wildlife violators. These rules would only apply to licenses and violation types within the DMF/MFC's jurisdiction.

An example of how this process would work is an N.C. resident receives a suspension after being convicted of taking shellfish from polluted waters in a member state. If the conviction from that member state resulted in a six-month

suspension, that suspension would likewise be ratified in North Carolina. Similarly, if a resident from another member state was convicted in North Carolina of taking shellfish from polluted waters, DMF would enter the corresponding suspension terms into the WVC database. It would then be up to that person's home jurisdiction as well as all the other member states to ratify or not. Also, suspensions that occur in a person's home state would be entered into the WVC so that member states could decide to ratify or not. As a WVC member, the DMF would be required to communicate all license suspension information through the WVC database to other participating states, and to determine if any suspension from another member state could have led to license suspension in North Carolina. If so, the licensing agency would issue an administrative suspension to that N.C. license holder.

One challenge presented by the WVC lies in determining whether to ratify a member state's suspension. DMF proposes to make this determination based upon the license type involved and type and severity of the violation. Under the WVC, only suspensions for violation types listed in the WVC manual as well as those that could be a basis for suspension by North Carolina may be considered. They are:

- illegal take of big game;
- illegal take or possession of endangered species;
- felony wildlife violations;
- license violations/fraud/false statement;
- waste of wildlife (e.g., out-of-season duck hunting violation);
- accumulated wildlife violations;
- violations while on revocation;
- sale/purchase of wildlife; and
- failure to appear.

Also included in considered offenses are:

- illegal take or possession of small game or migratory birds;
- illegal take or possession of fish;
- illegal take or possession of other wildlife;
- tag/permit/license transfer;
- federal wildlife violations;
- other criminal violations;
- guide/outfitter violations;
- safety violations;
- trespass violations;
- littering violations; and
- interfering with an officer.

Although the statute allows all suspension types from other jurisdictions to be ratified, the DMF recommends limiting the ratification of suspensions to egregious violations or those that are consistent within the DMF's subject matter. The DMF would not consider big game, small game, or migratory bird violations or any suspensions based strictly on hunting violations. However, cumulative hunting and fishing violations that trigger a suspension may be considered.

In considering suspensions, it is important to understand the suspension "triggers" in North Carolina. Presently, suspensions vary based upon the nature of the offense, the resource impacted, and the license type at issue. The consequences of some violations are more severe if the violation was committed during or as a result of occurring as part of a commercial fishing operation, such as commercially taking shellfish from polluted areas. All convictions for marine fisheries violations have a cumulative count towards suspensions within a three-year period. North Carolina's rules and statutes for suspension also affect all the products that a person holds (commercial and recreational). However, if a member state only suspended commercial or recreational products or only freshwater or saltwater products, the DMF would ratify as entered by the member state. Persons who are suspended under G.S. 113-300.6 are given appeals protections in G.S. 150B-23, as laid out in 15A NCAC 03O .0606. Table 2 provides specific examples of wildlife violations and how those would be considered by DMF and potentially applied to N.C. licenses and products. A wildlife violator must address their violation to address their suspension. For instance, if a person, resident or nonresident, was suspended for failure to appear or failure to comply from a member state, that person would need to pay their fine or comply with the judgement from the court (e.g., community service, time served, pay restitution) and provide documentation of that compliance to the member state that issued the suspension so that the suspension could be removed from the compact database and the person's license privileges and products could be returned.

Table 2. Examples of wildlife violations and how those would be considered by DMF and potentially applied to N.C. license holders.

State Where Conviction Occurred	Is Person with Conviction a N.C. Resident?	Violation Type	Was a Wildlife Resource License/Permit Suspended in Other Jurisdiction?	Does Person Have N.C. Fishing License/Permit?	Suspend N.C. Fishing License/Permit?	Comments
South Carolina	No	Over the limit flounder; multiple violations	Yes: all saltwater products for one year	No	Prevent purchase of N.C. licenses/permits for coastal fishing waters	Use duration of South Carolina's suspension; include recreational and commercial products
North Carolina	No	Harvest mullet during closed season	N/A	Yes: non-resident annual CRFL	No	First conviction in three-year period
Montana	Yes	Obtain license by fraud	Yes: all hunting and fishing products for one year	Yes: SCFL	Yes	Nature of violation and license type suspended considered
New Hampshire	Yes	Attempt to take game without valid tag	Yes: all hunting products for two years	Yes: RCGL	No	Nature of violation and license type suspended considered
Colorado	Yes	Illegal harvest of a deer	Yes: all products	Yes: Dealer's License	No	Nature of violation and license type suspended considered
California	No	Illegal harvest of a shark	Yes: all fishing	Yes: Land or Sell License	Yes	Nature of violation and license type suspended considered
Idaho	Yes	Assault	Yes: all products	Yes: dealers license	Yes	Conviction handled the same by DMF and WRC for egregious offense
Florida	No	Endangered species (taking of alligator)	DMF/MFC does not regulate this, but DMF would ratify due to egregiousness of offense. Yes: all products	Yes: CRFL	Yes	Would be for same duration as the member state entered
Georgia	Yes	Failure to Appear	Yes: all fishing	Yes: RCGL and Shellfish	Yes	Would remain suspended until the violation was addressed with the court

DMF anticipates some challenges in implementing the WVC. There may be some difficulty in out-of-state product holders receiving notice that they are suspended here. Currently all suspensions are served personally by N.C. Marine Patrol officers in the 26 coastal counties. Outside of the coastal counties notice is currently given by registered mail, with some exceptions. For out-of-state service, under the proposed rules N.C. Marine Patrol would have to rely on U.S. mail or confidence in the member state to provide notice to the person that they were also suspended in all the member states. For example, the WRC addresses this concern by giving notice to those being cited that they may be suspended in their home state for failure to appear or like-suspensions entered into the WVC.

DMF licenses that are held by corporations are unlikely to be affected by these rules as they are rarely if ever suspended. Most violations discovered by N.C. Marine Patrol officers are charged to a person. Typically, an officer will seek the person most culpable of a crime to make the strongest case in court rather than charge a group of people on a corporate board. Officers must have probable cause to issue a citation or make an arrest. To find probable cause an officer must have knowledge or evidence that a crime was committed and knowledge or evidence of who committed the crime. Finding probable cause for a corporate board that may not even be present for the possession of an illegal species or use of an illegal gear is much more difficult than finding probable cause for the person in actual possession of the illegal species or the person using the illegal gear. Masters listed on single vessel corporations could be suspended but the master designation is easily changed with a phone call to the DMF.

Entry into the WVC would increase accountability for non-resident applicants for Standard Commercial Fishing License (SCFL) eligibility. MFC rule 15A NCAC 03O .0404(2)(a) sets eligibility criteria and requirements and prevents consideration of an applicant for the SCFL Eligibility Pool who is suspended. Also, a person who is selected for eligibility that becomes suspended would become ineligible per 15A NCAC 03O .0404(2)(b). Presently, this only applies to N.C. licenses because out-of-state convictions and suspensions are not considered for suspensions per G.S. § 113-171 and 15A NCAC 03O .0404. Upon the effective date of these rules and the DMF's subsequent participation in the WVC, a **suspension** for a non-resident from any WVC member state would affect that person's license eligibility status in North Carolina. A non-resident applicant would remain ineligible as long as a suspension is in force. The non-resident would have to satisfy the terms of their violation and no longer be suspended to be considered in the eligibility process.

If that non-resident had **convictions** in a WVC member state that did not result in suspension in a WVC member state or had not yet resulted in suspension in a WVC member state, those convictions cannot be considered for non-resident applicants for SCFL eligibility in North Carolina per 15A NCAC 03O .0404 (2)(c) and (2)(d). So, convictions would still only be used against N.C. residents to determine SCFL eligibility consistent with G.S. § 113-300.6 Article I (b)(4) and (b)(5). But the DMF's participation in the WVC would allow the person's home state to recognize and treat any convictions that occurred in North Carolina as if they had occurred in the home state, which could ultimately lead to suspension. In short, once the DMF can participate in the WVC, while a non-resident's convictions cannot be considered, a non-resident's suspension in another WVC member state would make them ineligible in North Carolina for a SCFL from the Eligibility Pool.

There are six proposed MFC rules to implement the WVC. The following lists the name of each rule and its purpose:

- **15A NCAC 03O .0601 WVC GENERAL PROVISIONS:** incorporates relevant portions of the law (definitions) and clarifies that the scope is only fishing (not also hunting, trapping, etc.) It also includes a start date for the applicability of convictions under the proposed MFC rules.
- **15A NCAC 03O .0602 WVC OPERATIONS MANUAL:** establishes that the manual is the procedure guideline and provides a location for the reader to find it.
- **15A NCAC 03O .0603 WVC CONDITIONS FOR N.C. VIOLATIONS BY NON-RESIDENTS:** supports flexibility for inspectors (DMF) or protectors (WRC) to use their discretion for misdemeanor violations to issue a citation instead of arresting a person that commits a violation depending on the severity of the offense and the circumstances involved. Also establishes that if a wildlife violator does not resolve the terms of their violation, they will be suspended in the other WVC member states.
- **15A NCAC 03O .0604 WVC CONDITIONS FOR N.C. RESIDENTS FOR FAILURE TO APPEAR OR FAILURE TO COMPLY IN ANOTHER WVC MEMBER STATE:** addresses what happens for failure to appear or failure to comply when a N.C. resident is released on their own recognizance in another WVC member state for a wildlife violation but fails to resolve the terms of their violation; their N.C. licenses and permits can be suspended.

- **15A NCAC 030 .0605 WVC RECIPROCAL RECOGNITION OF SUSPENSIONS:** sets requirements and standards for DMF to decide to ratify or not ratify an out-of-state suspension.
- **15A NCAC 030 .0606 APPEALS:** identifies the appeals process for a licensee whose license is suspended or revoked pursuant to this Section of rules.

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

2

3 15A NCAC 03O .0601 is proposed for adoption as follows:

4

5 **SECTION .0600 – INTERSTATE WILDLIFE VIOLATOR COMPACT (WVC)**

6

7 **15A NCAC 03O .0601 WVC GENERAL PROVISIONS**

8 (a) The purpose of this Section is to establish the rules necessary to implement G.S. 113 Article 22B, the Interstate Wildlife
9 Violator Compact (hereinafter referred to as WVC).

10 (b) The rules in this Section shall apply to any person possessing a license, privilege, or right to take, possess, sell, buy, or
11 transport wildlife in the State of North Carolina. Violations under this Section apply only to offenses charged by an inspector as
12 set forth in laws or rules administered by the Division of Marine Fisheries or under G.S. 113-136(d). The rules shall not apply to
13 any offenses committed in North Carolina or any other WVC state prior to July 1, 2025.

14 (c) The definitions in G.S. 113-300.6 Article II shall apply throughout this Section and to all forms prescribed pursuant to this
15 Section, unless otherwise indicated.

16 (d) For the purpose of this Section, "member state" shall mean "party state" as defined in G.S. 113-300.6.

17

18 *History Note: Authority G.S. 113-134; 113-300.7;*

19 *Eff. May 1, 2025.*

1 15A NCAC 03O .0602 is proposed for adoption as follows:

2

3 **15A NCAC 03O .0602 WVC OPERATIONS MANUAL**

4 The Wildlife Violator Compact Operations Manual and G.S. 113-300.6 hereby establish the administrative and procedural
5 guidelines for participation in the WVC. The Wildlife Violator Compact Operations Manual is incorporated by reference
6 including subsequent amendments and editions, and is available at <http://www.ncwildlife.org> or
7 <http://www.deq.nc.gov/wildlifeviolatorcompact>. at no cost.

8

9 *History Note: Authority G.S. 113-134; 113-300.7;*

10 *Eff. May 1, 2025.*

1 15A NCAC 03O .0603 is proposed for adoption as follows:

2

3 **15A NCAC 03O .0603 WVC CONDITIONS FOR N.C. VIOLATIONS BY NON-RESIDENTS**

4 (a) All offenses charged by an inspector as set forth in laws or rules administered by the Division of Marine Fisheries or under
5 G.S. 113-136(d) are subject to the provisions of the WVC.

6 (b) Non-residents of North Carolina who are residents of a WVC member state at the time of a misdemeanor violation as set
7 forth in Paragraph (a) of this Rule occurring in North Carolina may be released on personal recognizance when the violation
8 consists of a written citation requiring a violator to resolve the violation directly with the court, either in person, by mail, or
9 through an attorney.

10 (c) Upon failure to comply with the terms of a citation issued by an inspector, the Division shall send notice of failure to comply.
11 The notice shall be a letter sent by the U.S. Postal Service to the last known address of the wildlife violator or be delivered
12 personally. The Division shall report the failure to comply to the non-resident's home state to start suspension procedures in
13 accordance with the Wildlife Violator Compact Operations Manual.

14 (d) To have any licenses or permits returned by the Division, the non-resident shall submit to the Division a judgment, receipt,
15 or other official record indicating that the citation has been resolved through the North Carolina Court System. The Division shall
16 return affected licenses and permits.

17

18 *History Note: Authority G.S. 113-134; 113-300.7;*

19 *Eff. May 1, 2025.*

1 15A NCAC 03O .0604 is proposed for adoption as follows:

2
3 **15A NCAC 03O .0604 WVC CONDITIONS FOR N.C. RESIDENTS FOR FAILURE TO APPEAR OR FAILURE TO**
4 **COMPLY IN ANOTHER WVC MEMBER STATE**

5 (a) North Carolina residents who commit a wildlife violation as defined by G.S. 113-300.6 in another WVC member state, who
6 upon release on personal recognizance from the issuing state, failed to resolve the terms of his or her citation, shall have any
7 licenses and permits for which the Division of Marine Fisheries has enforcement authority in North Carolina suspended pursuant
8 to G.S. 113-300.7.

9 (b) If the Division receives notice of an unresolved citation, a Notice of Suspension shall be prepared and sent to the wildlife
10 violator as follows:

11 (1) the suspension shall have a delayed effective date of at least 14 business days from the date of the mail used to
12 send the notice of suspension to the wildlife violator, to allow the wildlife violator to contact the court in the
13 issuing state and resolve the citation;

14 (2) the notice shall be a letter sent by the U.S. Postal Service to the last known address of the wildlife violator or
15 be delivered personally;

16 (3) the notice of suspension shall inform the violator of the issuing state from which the wildlife violator is
17 suspended, the details of the violation provided by that issuing state to the Division, and procedures to be
18 followed in resolving the matter with the court in the issuing state; and

19 (4) the notice shall provide the procedure for appealing the suspension.

20 (c) Any suspension ratified by the Division shall remain in effect until such time as the North Carolina resident resolves the
21 violation in the issuing state.

22 (d) When a North Carolina resident resolves a violation with the court in the issuing state, it is the responsibility of the resident
23 to notify the Division and present documentation of compliance by submitting a copy of either the court judgment resolving the
24 matter or a Notice of Compliance from the issuing state. Upon receipt of the required documentation, the Division shall issue an
25 acknowledgement of compliance to the resident. If the acknowledgement is issued before the effective date of the suspension,
26 the suspension shall be rescinded. If the acknowledgment of compliance is issued after the effective date of the suspension, the
27 Division shall return any licenses or permits.

28 (e) The issuing state shall be notified by the Division if the suspension order is overturned by the Office of Administrative
29 Hearings.

30
31 *History Note: Authority G.S. 113-134; 113-300.7; 143B-289.52;*
32 *Eff. May 1, 2025.*

1 15A NCAC 03O .0605 is proposed for adoption as follows:
2

3 **15A NCAC 03O .0605 WVC RECIPROCAL RECOGNITION OF SUSPENSIONS**

4 (a) When the Division of Marine Fisheries receives notice of a suspension from a WVC member state of a person's license or
5 permit that is the result of a conviction or an accumulation of convictions of wildlife violations in one or more WVC member
6 states, the Division shall determine whether the conviction, or accumulation of convictions, leading to the suspension could have
7 led to the suspension of licenses and permits for which the Division has enforcement authority pursuant to Chapter 113,
8 Subchapter IV of the General Statutes. If it is determined that the person's licenses and permits would have been suspended under
9 Chapter 113, Subchapter IV of the General Statutes, the person's North Carolina licenses and permits shall be suspended pursuant
10 to G.S. 113-300.7 for the period of suspension imposed by the WVC member state where the violation occurred.

11 (b) North Carolina shall communicate suspension information to other WVC member states using the WVC database, and may
12 include the following information about the wildlife violator:

13 (1) name;

14 (2) date of birth;

15 (3) last known address;

16 (4) violations and convictions upon which the suspension is based;

17 (5) scope of the suspension (e.g., fishing, hunting, trapping, all privileges or rights); and

18 (6) effective dates of the suspension and term of the suspension.

19 (c) In the event documentation of a violation and subsequent license suspension is needed by a WVC member state for license
20 suspension hearings or other purposes, the Division may provide certified copies of the citation or other charging instrument, any
21 arrest or investigation reports, suspension orders, and the disposition of the matter.

22
23 *History Note: Authority G.S. 113-134; 113-300.7; 143B-289.52;*

24 *Eff. May 1, 2025.*

1 15A NCAC 03O .0606 is proposed for adoption as follows:

2

3 **15A NCAC 03O .0606 APPEALS**

4 A person served with a notice of suspension or revocation pursuant to this Section may obtain an administrative review of the
5 suspension or revocation pursuant to G.S. 150B-23. Notice of the right to administrative review shall be included in the notice of
6 suspension or revocation.

7

8 *History Note: Authority G.S. 113-134; 113-300.7; 143B-289.52;*

9 *Eff. May 1, 2025.*

10

VII. PROPOSED MANAGEMENT OPTIONS

This issue paper presents a single option for consideration as it is the only option that would bring the DMF and MFC into compliance with the directive given in House Bill 105 from 2009 to adopt rules for North Carolina to enter into the WVC.

(+ Potential positive impact of action)

(- Potential negative impact of action)

- The DMF director loses some autonomy for N.C. licenses to be reinstated. He or she has to rely on compliance verification from other member states.
- Added burden to DMF staff to monitor WVC databases and ratify or not ratify suspension notices.
- Added burden for DMF staff to receive, enter, and disseminate information between agencies
- + Enhanced ability of DMF to keep wildlife violators from participating in fisheries activities
- + Enhanced ability of N.C. enforcement agencies to provide for the fair and impartial treatment of wildlife violators operating within member states
- + Affords N.C. residents the ability to be released on personal recognizance instead of being bonded in member states
- + Reduces delays and inconvenience associated with arrest that are comparable for residents and non-residents
- + More time for patrol and less time processing violators, and reduced burden on courts and jail facilities
- + Improved public relations by not having to subject as many violators to bonding and incarceration
- + Added deterrence for failure to appear and non-compliance cases
- + Notice to wildlife violators that activities in one state can affect their privileges in all member states
- + The DMF would have a say as to what suspensions are ratified.
- + The DMF would have knowledge of what suspensions are ratified.
- +/- The DMF would have to rely on WRC to gain access to the WVC databases for entries and ratifications.
- +/- N.C. license holders would have to comply with member states for their license to be reinstated for offenses that occurred outside of North Carolina.

VIII. RECOMMENDATION

The DMF recommends the MFC adopt rules to comply with existing statutes and directives to enter into the WVC.

Prepared by: Jason Walker, Jason.walker@deq.nc.gov, 252-515-5500

06/27/2023

Revised: 08/02/2023

08/31/2023

09/06/2023

02/13/2024

03/08/2024

03/11/2024

03/15/2024

03/20/2024

03/27/2024

04/03/2024

04/12/2024

04/18/2024

Appendix I. NC Wildlife Resources Commission WVC Rules

SECTION .1400 – INTERSTATE WILDLIFE VIOLATOR COMPACT (WVC)

15A NCAC 10A .1401 GENERAL PROVISIONS

(a) Purpose. The purpose of this section is to establish the rules necessary to implement G.S. 113 Article 22B, the Interstate Wildlife Violator Compact (hereinafter referred to as WVC).

(b) Applicability. The rules in this Section shall apply to any person possessing a license, privilege or right to hunt, fish, trap, possess, or transport wildlife in the State of North Carolina. Violations under this Section apply to only hunting, fishing and trapping. The rules shall not apply to any offenses committed in North Carolina or any other WVC state prior to August 1, 2017.

(c) Definitions. The definitions in G.S. 113-300.6 Article II shall apply throughout this Subchapter and to all forms prescribed pursuant to this Subchapter, unless otherwise indicated.

*History Note: Authority G.S. 113-134; 113-300.7;
Eff. August 1, 2017.*

15A NCAC 10A .1402 WILDLIFE VIOLATOR COMPACT MANUAL

The Wildlife Violator Compact Operations Manual, which is incorporated by reference, including subsequent amendments and editions, may be found free of charge, at <http://www.ncwildlife.org>, and G.S. 113-300.6 hereby establish the administrative and procedural guidelines for participation in the WVC.

*History Note: Authority G.S. 113-134; 113-300.7;
Eff. August 1, 2017.*

15A NCAC 10A .1403 WILDLIFE VIOLATOR COMPACT CONDITIONS FOR NON-RESIDENTS

(a) Non-residents of North Carolina who are residents of a WVC member state at the time of a misdemeanor hunting, fishing, or trapping violation occurring in North Carolina, may be released on personal recognizance when the violation consists of a written citation requiring a violator to resolve the violation directly with the court, either in person, by mail, or through an attorney.

(b) All identified offenses set forth in G.S. 113 are subject to the provisions of the WVC.

(c) Upon failure to comply with the terms of a citation for violation of North Carolina hunting, fishing, or trapping laws, the Wildlife Resources Commission shall send notice of failure to comply, by certified mail, return receipt requested, to the violator's last known address, and report the failure to comply to the home state to start suspension procedures in accordance with the Wildlife Violator Compact Manual.

(d) License privileges shall only be restored when the citation is resolved through the North Carolina Court System.

(e) Upon resolving the citation, the non-resident shall notify the Wildlife Resources Commission so that hunting, fishing or trapping privileges can be restored.

*History Note: Authority G.S. 113-134; 113-300.7;
Eff. August 1, 2017.*

15A NCAC 10A .1404 WILDLIFE VIOLATOR COMPACT CONDITIONS FOR RESIDENTS

(a) North Carolina residents committing hunting, fishing, or trapping violations in another WVC member state, who upon release on personal recognizance from the issuing state, failed to resolve the violation, shall have their hunting, fishing, or trapping privileges suspended in North Carolina.

(b) If the Wildlife Resources Commission receives notice of an unresolved violation, a Notice of Suspension shall be prepared and sent to the violator:

- (1) the notice shall have a delayed effective date of at least 14 business days, to allow the violator to contact the court in the issuing state and resolve the case;
- (2) the notice shall be delivered personally or by letter sent by certified mail, return receipt requested, to the last known address of the licensee or permit holder;
- (3) the notice of suspension shall inform the violator of the facts supporting the suspension and procedures to be followed in resolving the matter with the court in the issuing state; and
- (4) the notice shall provide the procedure for appealing the suspension.

- (c) Any suspensions received by the Wildlife Resources Commission shall remain in effect until such time as the North Carolina resident resolves the violation in the issuing state.
- (d) When a North Carolina resident resolves a violation with the court in the issuing state, it is the responsibility of the resident to present documents to the Wildlife Resources Commission that acknowledge compliance. Upon receipt of documentation set forth in Paragraph (e) of this Rule, an acknowledgement of compliance shall be issued directly to that person by the Wildlife Resources Commission.
- (e) The following shall be sufficient evidence of compliance in response to a notice of suspension for non-compliance:
- (1) copy of the court judgment; or
 - (2) a copy of a Notice of Compliance from the issuing state.
- (f) The Wildlife Resources Commission shall reinstate the license if the acknowledgement of compliance is presented after the effective date of the suspension.
- (g) Residents receiving a Notice of Suspension from the Wildlife Resources Commission under the WVC provisions for failure to resolve a citation issued in another WVC member state may file a petition with the Office of Administrative Hearings, within 60 days from the date of delivery by certified mail to the residents last known address, pursuant to G.S. 150B-23.
- (h) The issuing state shall be notified if the suspension order is overturned by the Office of Administrative Hearings.

*History Note: Authority G.S. 113-134; 113-300.7;
Eff. August 1, 2017.*

15A NCAC 10A .1405 RECIPROCAL RECOGNITION OF SUSPENSIONS

- (a) When the Wildlife Resources Commission receives notice of suspension of a North Carolina resident's hunting, fishing, or trapping privileges or licenses by a WVC member state that are the result of a conviction or an accumulation of convictions of wildlife violations in one or more states that participate in the WVC, the agency shall determine whether the violation, or accumulation of violations, leading to the suspension could have led to the suspension of rights, privileges, or licenses under G.S. 113. If it is determined that the resident's privileges or licenses would have been suspended under G.S. 113, the resident's licenses, rights, and privileges to hunt, fish, or trap in North Carolina shall be suspended pursuant to Article 22B of G.S. 113 for the same period as imposed by the WVC member state where the violation occurred.
- (b) North Carolina shall communicate suspension information to other member states, using the WVC database. Information may include the following:
- (1) name;
 - (2) date of birth;
 - (3) last known address;
 - (4) violation(s) and convictions upon which the suspension is based;
 - (5) scope of the suspension (i.e., fishing, hunting, trapping, all privileges or rights); and
 - (6) effective dates of the suspension and term of the suspension.
- (c) In the event documentation of a violation and subsequent license suspension is needed by a member state for license suspension hearings or other purposes, the Wildlife Resources Commission may provide certified copies of the citation or other charging instrument, any arrest or investigation reports, suspension orders, and the disposition of the matter.

*History Note: Authority G.S. 113-134; 113-300.7;
Eff. August 1, 2017.*

15A NCAC 10A .1406 APPEALS

A final agency decision made by the Wildlife Resources Commission to suspend any North Carolina hunting, fishing or trapping license pursuant to the WVC shall be appealable to the Office of Administrative Hearings pursuant to G.S. 150B-23. Notice of the right to appeal shall be included in the correspondence notifying the licensee of the final agency decision.

*History Note: Authority G.S. 113-134; 113-300.7;
Eff. August 1, 2017.*