



RULEMAKING UPDATE

2020-2021 RULEMAKING UPDATE MEMO

RULEMAKING PACKAGE A

RULEMAKING PACKAGE B

2020-2021 ANNUAL RULEMAKING
CYCLE PREVIEW



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

STEPHEN W. MURPHEY
Director

Oct. 23, 2020

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 the 2020-2021 annual rulemaking cycle, including rulemaking in support of the Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A, and request the MFC vote on final approval of readoption of the Recreational Water Quality Program rules in “Package A”.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. 150B-21.3A, adopted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2024 for 164 MFC rules.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the RRC approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- The MFC is scheduled to receive an update on public comments received about and vote on final approval of readoption of the seven Recreational Water Quality Program rules in 15A NCAC 18A .3401-.3407, Coastal Recreational Waters Monitoring, Evaluation, and Notification. If approved, the rules have an intended effective date of April 1, 2021, which coincides with the start of the 2021 recreational swimming season.

Action Needed

The MFC is scheduled to vote on final approval of readoption of the Recreational Water Quality Program rules.

Recommendation

The division recommends the MFC vote on final approval of readoption of the Recreational Water Quality Program rules. For more information, please refer to the [Rulemaking](#) section of the briefing materials.

2020-2021 Annual Rulemaking Cycle

“Package A” (7 rules)

Coastal Recreational Waters Monitoring, Evaluation, and Notification

At its May 2020 business meeting, the MFC approved Notice of Text for re adoption of the seven rules in 15A NCAC 18A .3401-.3407, Coastal Recreational Waters Monitoring, Evaluation, and Notification. These rules were adopted in 2004 and need updating to bring the Recreational Water Quality Program into compliance with new Environmental Protection Agency criteria and standards released in 2014 and to be more efficient as a program in protecting public health. The purpose of the program is to protect public health by monitoring recreational coastal waters and to notify the public when samples collected exceed the safe swimming standard. The new guidance is recommending the same bacterial threshold for all swimming locations regardless of usage category. These bacteriological limits will create efficiencies for how the division issues public notifications when samples collected exceed the safe swimming standard.

On Aug. 3, 2020 the proposed rules were published in the *N.C. Register*. The rules have an intended effective date of April 1, 2021, coinciding with the start of the 2021 recreational swimming season and creating a smooth transition. The MFC accepted public comments on the proposed rules from Aug. 3 through Oct. 2, 2020; one public comment was received in support of the rules. An online public hearing was also held via WebEx on Aug. 26, 2020. There were five members of the public in attendance; however, no public comments were received. The MFC is scheduled to receive an update on the public comments at its November 2020 business meeting and vote on final approval of the rules.

For more information, please refer to the materials for “Package A” in the [Rulemaking](#) section of the briefing materials, including a table showing the timing of the steps in the process, the Aug. 3, 2020 news release announcing the public comment opportunities for the proposed rules, an excerpt from the Aug. 3, 2020 *N.C. Register* when the proposed rules were published, a summary of the public hearing, and the written comment received.

“Package B” (50 rules)

Update on Periodic Review and Expiration of Existing Rules

At its August 2020 business meeting, the MFC approved Notice of Text for re adoption and amendment of the 50 rules in “Package B”. These rules cover the following subjects:

- Classification of Shellfish Growing Waters and Laboratory Procedures (14 rules)
- Rules with minor changes relating to standards for commercial shellfish sanitation and processing procedures (21 rules)
- Shellfish Lease User Conflicts, per Session Law 2019-37 (3 rules)
- General Regulations: Joint (9 rules)
- Shrimp Fishery Management Plan Amendment 1 Special Secondary Nursery Areas (2 rules; 1 re adoption and 1 amendment)
- Oyster Sanctuaries (1 rule amendment)

On Oct. 1, 2020 the proposed rules were published in the *N.C. Register*. The MFC is accepting public comments from Oct. 1 through 5 p.m. Nov. 30, 2020. Public comments on the proposed rules may be submitted by an online form available at <http://portal.ncdenr.org/web/mf/mfc-proposed-rules> (click on

April 1, 2021 Package B) or by U.S. mail to division Rules Coordinator Catherine Blum, P.O. Box 769, Morehead City, NC 28557. Comments submitted by email will not be accepted. Online public hearings were also scheduled for Oct. 21 and 27, 2020 at 6 p.m. via WebEx. The proposed rules and the corresponding fiscal analyses are available on the website as well.

The MFC will receive an update on the public comments at its February 2021 business meeting and will be requested to vote on final approval of the rules. Please refer to the materials for “Package B” in the [Rulemaking](#) section of the briefing materials, including a table showing the timing of the steps in the process, the news release announcing the public comment opportunities for the proposed rules, and an excerpt from the Oct. 1, 2020 *N.C. Register* when the proposed rules were published.

2021-2022 Annual Rulemaking Cycle Preview

Division staff will provide a preview of potential rules in the MFC’s 2021-2022 annual rulemaking cycle at its November 2020 business meeting. There will be two packages of rules, similar to the 2020-2021 cycle, due to the number of rules remaining to be readopted. Please see Figure 1, detailed in the Background Information section below, that shows the MFC’s rule readoption schedule. Also, the [Rulemaking](#) section of the briefing materials includes tables showing the timing of the steps in the process for “Package A” and “Package B” of the 2021-2022 cycle.

Background Information

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

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

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

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Proposed	Rule Readoption (116)	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Proposed	Rule Readoption (122)			6/30/24 deadline

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



RULEMAKING UPDATE

PACKAGE A

2020-2021 ANNUAL RULEMAKING CYCLE TABLE

AUGUST 3 NEWS RELEASE

NC REGISTER PUBLICATION OF PROPOSED RULES

N.C. Marine Fisheries Commission 2020-2021 Annual Rulemaking Cycle Package A

November 2020

Time of Year	Action
February-April 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 2020	MFC approves Notice of Text for Rulemaking
August 2020	Publication of proposed rules in the <i>North Carolina Register</i>
August-October 2020	Public comment period held
Aug. 26, 2020	Public hearing held via WebEx
November 2020	MFC considers approval of permanent rules
January 2021	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2021	Proposed effective date of rules
April 1, 2021	Rulebook supplement available online
April 15, 2021	Commercial license sales begin

Roy Cooper
Governor

Michael S. Regan
Secretary



Steve Murphey
Director

Release: Immediate
Date: Aug. 3, 2020

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

MEDIA ADVISORY: Public hearing scheduled for comment on coastal recreational water quality rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on proposed amendments and re-adoption of seven rules under a state-mandated periodic review schedule. The rules pertain to coastal recreational water quality monitoring to protect the public health of swimmers.

A public hearing will be held by web conference on Aug. 26 at 6 p.m. The public may join the meeting online; however, those who wish to speak during the hearing must register by noon Aug. 26.

Members of the public also may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Recreational Water Quality Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the Division of Marine Fisheries by 5 p.m. Oct. 2, 2020.

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

Up for re-adoption are marine fisheries rules in 15A NCAC 18A .3400. Rules .3401, .3402, .3403, and .3405 contain the primary proposed changes that will:

- Update biological standards so they align with new federal performance criteria.
- Ensure equal protection for swimmers by requiring the same bacteriological threshold triggers public health advisories for all swimming locations, regardless of usage frequency.
- Modify the public notification process to reduce delays and confusion, without generating an increased frequency of swimming advisories for the public.

Other proposed changes are technical in nature; two rules are proposed for repeal because they duplicate requirements.

The proposed rule changes will be presented to the Marine Fisheries Commission for final approval in November 2020 and have an intended effective date of April 1, 2021.

For questions about the Marine Fisheries Commission rulemaking process, email [Catherine Blum](#), rules coordinator for the N.C. Division of Marine Fisheries. For questions about the proposed changes to the N.C. Recreational Water Quality Program rules, email [Erin Bryan-Millush](#), with the division's Recreational Water Quality Program, or call her at 252-808-8153.

Event Title:	Marine Fisheries Commission Public Hearing for Proposed Rules
Date and Time:	Aug. 26, 2020 at 6 p.m.
WebEx Link:	https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=ea8608d0638d06136715b7a10b3dce68a
Password:	1234
Event Number:	161 720 5186

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Website: <http://www.ncdenr.gov>
Facebook: <http://www.facebook.com/ncdeq>
Twitter: <http://twitter.com/NCDEQ>
RSS Feed: <http://portal.ncdenr.org/web/opa/news-releases-rss>
1601 Mail Service Center, Raleigh, NC 27699-1601

NORTH CAROLINA REGISTER

VOLUME 35 • ISSUE 03 • Pages 154 – 312

August 3, 2020

I. EXECUTIVE ORDERS	
Executive Order No. 147-149	154 – 170
II. PROPOSED RULES	
Labor, Department of	
Department	171 – 174
Environmental Quality, Department of	
Marine Fisheries Commission	174 – 178
III. APPROVED RULES	179 – 297
Administration, Department of	
Department	
Agriculture and Consumer Services, Department of	
Pesticide Board	
Health and Human Services, Department of	
Medical Care Commission	
Department	
Public Health, Commission for	
State Registrar	
Insurance, Department of	
Department	
Justice, Department of	
Criminal Justice Education and Training Standards Commission	
Sheriffs' Education and Training Standards Commission	
Public Safety, Department of	
Private Protective Services Board	
Environmental Quality, Department of	
Coastal Resources Commission	
Environmental Management Commission	
Wildlife Resources Commission	
Occupational Licensing Boards and Commissions	
Auctioneer Licensing Board	
Barber Examiners, Board of	
Engineers and Surveyors, Board of Examiners for	
Massage and Bodywork Therapy, Board of	
Real Estate Commission	
State Human Resources Commission	
Commission	
IV. RULES REVIEW COMMISSION	298 – 308
V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	309 – 312

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: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

984-236-1934

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dana.mcghee@oah.nc.gov

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984-236-1938

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: Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

984-236-1936

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

984-236-1939

Ashley Snyder, Commission Counsel

ashley.snyder@oah.nc.gov

984-236-1941

Karlene Turrentine, Commission Counsel

karlene.turrentine@oah.nc.gov

984-236-1948

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

984-236-1940

Julie Brincefield, Administrative Assistant

julie.brincefield@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: Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0689

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

919-715-2893

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

919-715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@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

Jeremy Ray, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

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
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
34:20	04/15/20	03/24/20	04/30/20	06/15/20	06/22/20	07/16/20	08/01/20	01/10/21
34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
35:01	07/01/20	06/10/20	07/16/20	08/31/20	09/21/20	10/15/20	11/01/20	03/28/21
35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
35:03	08/03/20	07/13/20	08/18/20	10/02/20	10/20/20	11/19/20	12/01/20	04/30/21
35:04	08/17/20	07/27/20	09/01/20	10/16/20	10/20/20	11/19/20	12/01/20	05/14/21
35:05	09/01/20	08/11/20	09/16/20	11/02/20	11/20/20	12/17/20	01/01/21	05/29/21
35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

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.

PROPOSED RULES

(1)	Inflatables	\$100.00	Annually
(2)	Rock Walls Walls, portable	\$100.00	Annually
(3)	Kiddie Rides (48 inch maximum height restriction)	\$45.00 <u>\$100.00</u>	Every setup, except in permanent parks, which shall be inspected annually
(4)	Go Karts	\$35.00 <u>\$50.00</u>	Every setup, except in permanent parks, which shall be inspected annually
(5)	<u>Go Kart Tracks</u>	<u>\$100.00</u>	<u>Every setup, except in permanent parks, which shall be inspected annually</u>
(5) (6)	Major Rides (any ride not otherwise listed herein) and Water Slides	\$90.00 <u>\$100.00</u>	Every setup, except permanent parks, which shall be inspected annually
(6) (7)	Roller Coasters <u>Coasters, other than mobile or portable roller coasters</u>	\$250.00	Annually
(8)	<u>Simulators, portable</u>	<u>\$100.00</u>	<u>Every setup</u>
(9)	<u>Simulators, stationary</u>	<u>\$100.00</u>	<u>Annually</u>
(10)	<u>Trains, small fixed track</u>	<u>\$100.00</u>	<u>Annually</u>
(11)	<u>Waterslides</u>	<u>\$150.00</u>	<u>Annually</u>

Authority G.S. 95-107; 95-111.4(19).

13 NCAC 15 .0704 SPECIAL AMUSEMENT DEVICE INSPECTION FEE

(a) In the event that an inspection is scheduled and the amusement device operator or owner fails to have all amusement devices scheduled for inspection ready for inspection, any follow up inspection visits requested by the operator or owner shall be charged at two hundred fifty dollars (\$250.00) per amusement device, notwithstanding the provisions of 13 NCAC 15 .0703.

(b) All inspections conducted outside normal business hours for the North Carolina Department of Labor (~~7:00~~ 8:00 a.m. to 6:00 ~~7:00~~ p.m. Monday through Friday, exclusive of State government holidays) shall be charged at the rate of two hundred fifty dollars (\$250.00) per inspection, plus the amusement device inspection fee, notwithstanding the provisions of 13 NCAC 15 .0703, however, in no instance may the total fee assessed exceed an aggregate of two hundred fifty dollars (\$250.00) for each device inspected.

Authority G.S. 95-107; 95-111.4(19).

13 NCAC 15 .0705 PASSENGER TRAMWAY INSPECTION FEE SCHEDULE

Inspection fees for all passenger tramway devices shall be as follows: ~~\$137.00.~~

Equipment	Unit Fee
(1) Gondolas, Chairlifts, and Inclined Railroads	\$137
(2) J or T Bars and Conveyors	\$62
(3) Rope Tows	\$31

Authority G.S. 95-120(9).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to readopt with substantive changes the rules cited as 15A NCAC 18A .3401-.3405 and repeal through readoption the rules cited as 15A NCAC 18A .3406, and .3407.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/mf/mfc-proposed-rules>

Proposed Effective Date: April 1, 2021

Public Hearing:

Date: August 26, 2020

Time: 6:00 p.m.

Location: *In an abundance of caution and to address protective measures to help prevent the spread of COVID-19, this public hearing will be held by webinar. WebEx Events meeting link: <https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=ea8608d0638d06136715b7a10b3dce68a> Event number: 161 720 5186 Event password: 1234*

Reason for Proposed Action: *The agency proposes five rules for readoption and two rules for repeal through readoption in accordance with G.S. 150B-21.3A for the Periodic Review and Expiration of Existing Rules. This is the first package of rules in 15A NCAC 18A for readoption over a four-year period. As part of the readoption process the agency is proposing changes to comply with the U.S. Environmental Protection Agency (EPA) performance criteria released in 2014. The program follows guidance set forth by the EPA in accordance with the Beach*

Environmental Assessment Coastal Health Act (BEACH Act). The new guidance will increase efficiency in protecting public health and is recommending the same bacterial threshold for all swimming locations regardless of usage category. These bacteriological limits will impact how the agency issues public notifications when samples collected exceed the safe swimming standard.

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 <http://portal.ncdenr.org/web/mf/mfc-proposed-rules>.

Comment period ends: October 2, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

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

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply ~~throughout to~~ Section 18A .3400 of this Subchapter:

- (1) "Division" means the Division of Marine Fisheries or its authorized agent.
- ~~(1)~~(2) "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts of warm-blooded animals that include Enterococcus faecalis, Enterococcus faecium, Enterococcus avium, and Enterococcus gallinarium.

- ~~(2)~~(3) "Geometric mean" means the mean of "n" positive numbers obtained by taking the "~~n~~th" "nth" root of the product of the numbers with at least five samples collected within a ~~30 day~~ 30-day period.
- (4) "Pending swimming advisory" means a notification to the public that recommends no primary contact with the water in a specific swimming area when bacteriological limits are exceeded but, does not close a swimming area to the public. A pending swimming advisory shall include a public notification via social media release to notify the public of the risks of swimming in the area. A pending swimming advisory is followed by a resample that will determine if a swimming advisory will be issued.
- ~~(3)~~(5) "Point source discharge" means the discharge of liquids through a pipe, drain, ~~ditch~~ ditch, or other conveyance into a swimming area.
- ~~(4)~~(6) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (7) "Resample" means a water sample that is collected after the results of the initial water sample collected are processed and the results are analyzed.
- ~~(5)~~(8) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into coastal recreational waters.
- ~~(6)~~(9) "Swimming advisory" means a notification to the public that recommends no primary contact with the water in a specific swimming area ~~for public health reasons when bacteriological limits are exceeded,~~ but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a ~~press release~~ public notification via social media and news release to notify the public of the risks of swimming in the area.
- (7) "Swimming alert" means a notification to the public by ~~media contact including a press release to warn the public of risks of swimming in an area that exceeds bacteriological swimming area levels.~~
- ~~(8)~~(10) "Swimming area" means a coastal recreation area that is used for primary contact located within waters classified by the Division of Water Quality Resources as SA, SB, or SC. SC, SA, or SB as set forth in 15A NCAC 02B .0220-.0222, and is hereby incorporated by reference including subsequent amendments and editions.
- ~~(9)~~(11) "Swimming season" means from April 1 through October 31 of each year.
- ~~(40)~~(12) "Tier I swimming area" means a swimming area used daily during the swimming season, ~~including any public access swimming area and any other swimming area where people use the~~

~~water for primary contact, including all oceanfront beaches; beaches that are monitored by the Division.~~

- ~~(11)~~(13) "Tier II swimming area" means a swimming area ~~used an average of three days a week that is not used daily during the swimming season.~~
- (12) "Tier III swimming area" means a swimming area ~~used an average of four days a month during the swimming season.~~
- ~~(13)~~(14) "Winter season" means from November 1 through March 31 of each year.

Authority G.S. 130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52.

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

(a) The enterococcus level in a Tier I swimming area shall not equal or exceed either:

- (1) A a geometric mean of 35 enterococci per 100 ~~milliliter~~ milliliters of water, ~~water; that includes a minimum of at least five samples collected within 30 days; or~~
- (2) A a single sample of 104 enterococci per 100 ~~milliliter~~ milliliters of water.

(b) The enterococcus level in a Tier II swimming area shall not equal or exceed a single sample of 276 104 enterococci per 100 ~~milliliter~~ milliliters of water.

~~(c) The enterococcus level in a Tier III swimming area shall not exceed two consecutive samples of 500 enterococci per 100 milliliter of water.~~

Authority G.S. 130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52.

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

(a) Tier I Swimming areas:

- ~~(1) A swimming advisory shall be issued by the Division when samples of water from a swimming area exceeds a geometric mean of 35 enterococci per 100 milliliter during the swimming season.~~
- (2) A swimming alert shall be issued by the Division when a single sample of water from a swimming area ~~exceeds 104 enterococci per 100 milliliter and does not exceed 500 enterococci per 100 milliliter during the swimming season.~~
- ~~(3) A swimming advisory shall be issued by the Division when a sample of water from a swimming area exceeds a single sample of 500 enterococci per 100 milliliter during the swimming season.~~
- (4) A swimming advisory shall be issued by the Division when at least two of three concurrent water samples collected at a swimming area ~~exceeds 104 enterococci per 100 milliliter during the swimming season.~~

(1) A pending swimming advisory shall be issued by the Division of Marine Fisheries if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section, during the swimming season.

(2) A swimming advisory shall be issued by the Division if either of the following standards are exceeded during the swimming season:

(A) Both the initial water sample and resample collected from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section; or

(B) The most recent five water samples collected within a 30-day period from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

(b) Tier II swimming areas:

~~(1) A swimming alert shall be issued by the Division when a single sample of water from a swimming area exceeds 276 enterococci per 100 milliliter and does not exceed 500 enterococci per 100 milliliter during the swimming season.~~

(1) A pending swimming advisory shall be issued by the Division if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.

(2) A swimming advisory shall be issued by the Division when a single sample if both the initial water sample and resample collected of water from a swimming area is equal to or exceeds 500 enterococci per 100 milliliter the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.

~~(c) A Tier III swimming area with a water sample result of 500 enterococci per 100 milliliter or higher on the first sample shall be resampled the following day. If the laboratory results of the second sample exceed 500 enterococci per 100 milliliter a swimming advisory shall be issued by the Division.~~

~~(d)~~(c) Signs posted pursuant to this Section shall be placed or erected in open view where the public may see the ~~sign(s)~~ sign prior to entering the water.

~~(e)~~(d) Signs shall ~~convey~~ state the following:

ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN. OFFICE OF THE STATE HEALTH DIRECTOR.

Authority G.S. ~~130A-233.1~~; 113-134; 113-182; 113-221.3; 143B-289.52.

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

(a) A wastewater treatment plant that discharges into swimming waters shall be posted by the Division of Marine Fisheries with at least one sign until the discharge is removed. The ~~sign(s)~~ sign for a wastewater treatment plant discharge shall ~~convey state~~ convey state the following:

~~ATTENTION: THESE WATERS MAY BE CONTAMINATED BY HUMAN OR ANIMAL WASTE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.~~
WARNING! SEWAGE TREATMENT EFFLUENT DISCHARGE SITE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

(b) A swimming advisory shall be issued by the Division and at least one sign shall be posted at the public access to swimming waters that have been impacted by a wastewater system failure. The sign for waters impacted by a wastewater spill shall state the following:

WARNING! WASTEWATER SPILL. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

~~(b)(c)~~ (c) A swimming advisory shall be issued by the Division and at least ~~two signs~~ one sign shall be posted at a storm drain or storm water discharge that is ~~actively~~ actively discharging into a Tier I swimming area. ~~Signs~~ A sign shall be placed to advise the public as they enter the area impacted by the ~~drain~~ storm drain or storm water discharge. For dry weather discharges, ~~The signs~~ the sign for a ~~storm drain or storm water discharge~~ shall ~~convey state~~ convey state the following:

~~SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.~~
WARNING! STORM WATER DISCHARGE AREA. SWIMMING WITHIN 200 YARDS OF THIS SIGN MAY INCREASE THE RISKS OF WATERBORNE ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

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

WARNING! STORM WATER DISCHARGE AREA. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. SWIMMING IS NOT RECOMMENDED WITHIN 200 YARDS OF

THIS SIGN DURING ACTIVE DISCHARGE. FOR MORE INFORMATION, CALL 252-726-6827. OFFICE OF THE STATE HEALTH DIRECTOR.

~~(e)(d)~~ (d) A swimming advisory shall be issued by the Division and at least two signs shall be posted at a storm drain where flood waters are being pumped into a swimming area. ~~The signs shall remain posted for at least 24 hours after the pumping of flood waters has ceased.~~ The signs shall ~~convey state~~ convey state the following:

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

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

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

Authority G.S. ~~130A-233.1~~; 113-134; 113-182; 113-221.3; 143B-289.52.

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

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

~~(a)(b)~~ (b) A Tier I swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, when two consecutive weekly water samples and the geometric mean meet the bacteriological limits in Rule 18A .3402(a) of this Section. A swimming alert shall be rescinded within 24 hours of compliance with Rule 18A .3402(a)(2) of this Section. both of the following conditions are met:

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

~~(b)(c)~~ (c) A Tier II ~~or Tier III~~ swimming area advisory ~~or alert~~ shall be rescinded by the Division via social media and news release, including the removal of signs, after water samples meet the bacteriological standard in Rule 18A .3402(b) or (c) of this Section. limit set forth in Rule .3402(b) of this Section.

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

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

~~(d) When a swimming advisory or alert has been rescinded, the Division shall issue a press release to announce the lifting of the advisory or the alert and the sign(s) shall be removed immediately by the Division.~~

Authority G.S. ~~130A-233.1~~; 113-134; 113-182; 113-221.3; 143B-289.52.

15A NCAC 18A .3406 DESTRUCTION OF SIGNS

~~A person shall not mutilate, deface, pull down, destroy, hide, or steal any sign posted pursuant to this Section.~~

Authority G.S. 130A-233.1.

15A NCAC 18A .3407 APPLICABILITY OF RULES

~~The rules of this Section shall apply to all marine recreational waters in coastal North Carolina.~~

Authority G.S. 130A-233.1.

**MARINE FISHERIES COMMISSION
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES
DIVISION OF MARINE FISHERIES
WEBEX ONLINE HEARING
AUG. 26, 2020, 6 PM**

Marine Fisheries Commission: None

Division of Marine Fisheries Staff: Catherine Blum, Erin Bryan-Millush, Corrin Flora, Dana Gillikin, Shannon Jenkins, Lara Klibansky, Shawn Nelson

Public: Kerri Allen, Larry Baldwin, Jeff Manning, Annie Mercer, Nicole Triplett

Media: None

Division of Marine Fisheries Rulemaking Coordinator Catherine Blum, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 6 p.m. There were five members of the public in attendance. She explained the agency is proposing five rules for readoption cited as 15A NCAC 18A .3401-.3405 and two rules for repeal through readoption cited as 15A NCAC 18A .3406 and .3407 in accordance with G.S. 150B-21.3A for the Periodic Review and Expiration of Existing Rules.

Mrs. Blum said public comments on the proposed rules will be presented to the Marine Fisheries Commission at its Nov. 18-20, 2020 meeting prior to its vote on final approval of the rules. Written comments will be accepted through Oct. 2. She 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*.

Mrs. Blum reviewed the proposed rules by explaining the reason for proposed action for the seven rules as published in Volume 35, Issue 03 of the *N.C. Register*. She opened the floor for the public to provide comments. No one in attendance provided comments. Mrs. Blum closed the hearing at 6:08 p.m.

/cb



North Carolina
Coastal Federation
Working Together for a Healthy Coast

September 14, 2020

N.C. Marine Fisheries Commission
Recreational Water Quality Rules Comments
P.O. Box 769
Morehead City, NC 28557

Re: Marine Fisheries Commission Proposed Rules 2020-2021 Package A Recreational Water Quality Program Rules

Dear Commission members:

On behalf of the North Carolina Coastal Federation (federation), please accept the following comments on the Marine Fisheries Commission's proposed amendments and re-adoption of Coastal Recreational Water Quality Program Rules. The federation supports the proposed amendments brought forth for review, and respectfully requests the Commission's consideration of additional enhancements, as outlined in this letter.

The federation is a non-profit organization dedicated to protecting and restoring the North Carolina coast. Our organization represents 16,000 supporters statewide and works with the public, agencies and local governments to communicate and collaborate wherever possible towards solutions that lead to the stewardship and resiliency of our coast. Since 1982, the federation has been working with coastal communities and other partners to improve and protect coastal water quality and natural habitats, which are intricately tied to our coastal economy. By focusing primarily, but not exclusively on natural and productive estuarine shorelines, oyster and marsh restoration, coastal management and cleaning the estuaries of marine debris, we strive to support and enhance the coastal natural environment.

Clean coastal waters that support fishing and swimming are the foundation for our coastal environment and economy. As presented, the proposed amendments strengthen state rules within 15A NCAC 18A .3400 for both residents and visitors. The new language ensures equal protection for swimmers by requiring the same bacteriological threshold triggers for public health advisories for all swimming locations, regardless of usage frequency. By consolidating tiers and issuing advisories in Tier II with just one exceedance of the now lowered standard, more protection will be afforded to users.

As written, the proposed modifications to the swimming advisory notification process will also reduce delays and confusion. The draft language for wastewater and stormwater discharge sites, as well as that for wastewater spills, will improve clarity and ultimately, human health. North Carolina swimming waters are enjoyed by hundreds of thousands of

residents from all across the state each year. Oftentimes, visitors to these coastal areas do not understand the risks associated with swimming in affected waters, and rely upon state and local government to adequately inform and protect. Making sure advisories are sufficiently advertised and posting signage that clearly explains risks is paramount to not only public health but also to the coastal economy.

The federation represents thousands of North Carolinians who drink, fish, swim, and paddle the state's waters. These users place a high value on the quality of water resources; however, current environmental protection measures are often insufficient and additional protections are necessary to prevent further degradation. In addition to the proposed amendments, the federation respectfully brings the following items to the Commission's attention for consideration:

- 1) The federation encourages the Commission to adopt a more inclusive definition of *primary contact* that is consistent with EPA standards.

As written in 15A NCAC 18A .3401, *primary contact* is defined as "an activity in water in which a person's head is partially or completely submerged."

Under §304(a)(1) of the Clean Water Act, the Administrator of the EPA is directed to develop and publish water quality criteria that accurately reflect the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare that might be expected from the presence of pollutants in any body of water. Within the most recent Recreational Water Quality Criteria, EPA describes *primary contact* recreation as typically including activities where immersion and ingestion are likely and there is a high degree of bodily contact with the water, such as swimming, bathing, surfing, water skiing, tubing, skin diving, water play by children, or similar water-contact activities.¹

Based upon EPA language, we recommend the Commission adopt a more robust definition of *primary contact* that reflects all possible water-contact activities, not just those in which an individual's head is submerged.

- 2) The federation encourages the Commission to post at all stormwater outfalls, regardless of use or tier designation when active discharges of water are occurring.

As written in 15A NCAC 18A .3404, swimming advisories and signage are required at a storm drain or storm water discharge that is actively discharging into a Tier I swimming area, but there is no mention of actions associated with Tier II sites. The federation contends that warning and protecting the public at stormwater outfalls is the responsibility of the state, regardless of usage volume.

Furthermore, there should be an active notification requirement for advisories from the abovementioned stormwater outfalls whenever they discharge stormwater.

¹ <https://www.epa.gov/sites/production/files/2015-10/documents/rwqc2012.pdf>

Since public advisories are only issued in the presence of/as a result of sampling data (as outlined in 15A NCAC 18A .3403), the public is not notified of the health risks posed from active stormwater conveyances. Advisories should be posted when discharges take place to avoid public health threats that result from contaminants released from flows occurring between sampling events.

- 3) The federation encourages the Commission to close swimming areas and impose enforceable swimming bans when bacteriological limits are exceeded.

As described in 15A NCAC 18A .3401, swimming advisories provide notifications to the public that recommends no primary contact with the water in a specific swimming area for public health reasons when bacteriological limits are exceeded, but does not close a swimming area to the public.

Nationwide, ample precedent exists to close swimming areas when bacteriological limits are exceeded. A report generated from the EPA's Beach Advisory and Closing On-line Notification tool (BEACON) identified 11 different coastal states that have issued swimming closures as a result of elevated bacterial levels over the last 25 years.²

In Rhode Island for example, the Department of Health works to determine whether the water at state beaches is safe for swimming, and imposes closures when exceedances of more than 60 cfu/100 mL in saltwater and in freshwater are reported. As a result, 51 beach closures have occurred to date in Rhode Island this year.³

Precedence exists within North Carolina, as well; North Carolina State Parks close swimming areas each year for a number of public health and safety reasons, including poor water quality. The mission of the North Carolina Recreational Water Quality Program is to protect the public health by monitoring the quality of North Carolina's coastal recreational waters and notifying the public when bacteriological standards for safe bodily contact are exceeded.⁴

As such, the federation affirms that it is the responsibility of the state to protect the public health not only by monitoring the quality of North Carolina's coastal waters, but also by imposing actionable closures.

- 4) The federation encourages the Commission to post advisories and signage in English and Spanish.

² <https://watersgeo.epa.gov/beacon2/>

³ <https://health.ri.gov/data/beaches/>

⁴ <http://portal.ncdenr.org/web/mf/recreational-water-quality>

North Carolina Coastal Federation

The federation believes that all people deserve to live, work and play in healthy and safe places, and that everyone should have a voice in management decisions that affect the future of their coastal communities.

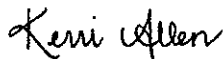
North Carolina's Hispanic population is nearing 1 million, with 932,000 residents in 2016.⁵ Statewide, over 9% of North Carolina's population is Spanish-speaking and North Carolina is one of only eight states nationwide to require labor laws to be posted in Spanish, as well as English.⁶

Through the federation's own work within the 20 coastal counties, it is well established that many subsistence fishers speak only Spanish and rely on the state's coastal waters to supplement their food budget. Any new signage published by the federation includes Spanish translations, and work continues to engage these vital populations in ongoing conservation and restoration efforts.

The Commission should follow the lead of conservation and equity groups across the country to foster inclusion and protect the public health by posting advisories and signage in English and Spanish to protect all users.

Thank you for the opportunity to comment on these important changes, and for your ongoing work to safeguard our communities and environment. Together with the help of the Commission, the federation continues to work towards a natural, beautiful and productive coast that is a great place to live, work and visit.

Sincerely,



Kerri Allen,
Coastal Advocate

⁵ <https://www.ncdemography.org/2017/10/10/the-hispaniclatino-community-in-north-carolina/>

⁶ <https://www.labor.nc.gov/labor-law-posters>



RULEMAKING UPDATE

PACKAGE B

2020-2021 ANNUAL RULEMAKING CYCLE TABLE

OCTOBER 1 NEWS RELEASE

NC REGISTER PUBLICATION OF PROPOSED RULES

N.C. Marine Fisheries Commission 2020-2021 Annual Rulemaking Cycle Package B

November 2020

Time of Year	Action
February-July 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2020	MFC approves Notice of Text for Rulemaking
October 2020	Publication of proposed rules in the <i>North Carolina Register</i>
October-November 2020	Public comment period held
Oct. 21 and 27, 2020	Public hearings held via WebEx
February 2021	MFC considers approval of permanent rules
March 2021	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2021 <i>or</i> TBD	Proposed effective date of rules; some rules are subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
April 1, 2021	Rulebook supplement available online
April 15, 2021	Commercial license sales begin

Roy Cooper
Governor

Michael S. Regan
Secretary



Steve Murphey
Director

Release: Immediate
Date: Oct. 1, 2020

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

MEDIA ADVISORY: Comment period opens, public hearings scheduled for various marine fisheries rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on proposed amendments and re-adoption of 50 rules under a state-mandated periodic review schedule.

Most of the rules pertain to shellfish lease user conflicts, reclassification of Special Secondary Nursery Areas, oyster sanctuaries, classification of shellfish growing waters, and sanitation standards for commercial crustacea processing procedures.

Other rules pertaining to joint fishing waters are proposed for re-adoption with no changes.

Two public hearings will be held by web conference on Oct. 21 at 6 p.m. and on Oct. 27 at 6 p.m. The public may join the meetings online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing.

Members of the public also may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Recreational Water Quality 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. Nov. 30, 2020.

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

The N.C. Marine Fisheries Commission proposes re-adoption of a portion of rules in 15A NCAC 03O (shellfish lease user conflicts), 15A NCAC 03Q (joint fishing waters), 15A NCAC 03R (Special Secondary Nursery Areas and oyster sanctuaries), and 15A NCAC 18A (shellfish growing waters and shellfish sanitation and processing). Proposed rule changes will:

- Address user conflicts associated with shellfish leases while supporting a productive shellfish aquaculture industry, as required by [NCGA Session Law 2019-37](#). The proposed changes will increase setback requirements from developed shorelines for new shellfish leases; limit the allowable number of corner markers for demarcating shellfish leases to simplify the polygon shapes; set new criteria for shellfish lease stakes and signage to alleviate navigation concerns; and, initiate a new shellfish leaseholder training program that emphasizes user conflict reduction strategies.
- Reclassify nine Special Secondary Nursery Areas to Secondary Nursery Areas, as recommended by the Shrimp Fishery Management Plan Amendment 1. The nine areas have not been opened to trawling since at least 2004, so there will be no effective change to the shrimp trawl fishery; however, the reclassification will result in a small mesh gill net attendance requirement in these waters, except for Scranton Creek. All areas have gill net attendance requirements now; the proposed rules would require additional attendance in all waters, not just 50 yards from the shoreline, from May 1 to Nov. 30.
- Amend the oyster sanctuaries rule by adding five new sites (Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island), updating boundaries for three existing sites (Neuse River, West Bluff, and Gibbs Shoal), and removing two sites that no longer function as sanctuaries (Ocracoke and Clam Shoal).

Website: <http://www.ncdenr.gov>

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

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

RSS Feed: <http://portal.ncdenr.org/web/opa/news-releases-rss>

1601 Mail Service Center, Raleigh, NC 27699-1601

Roy Cooper
Governor

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Secretary



Steve Murphey
Director

- Update shellfish sanitation laboratory procedures, sanitation survey reporting requirements, standards for classifying shellfish waters, and definitions to conform with current national standards.
- Readopt with no changes nine rules that pertain to joint fishing waters, in accordance with a state-mandated periodic review schedule.
- Correct grammar, typographical errors, and update agency names.

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2021 and have an earliest effective date of April 1, 2021.

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

WHO: Marine Fisheries Commission
WHAT: Two Public Hearings for Proposed Rules
WHEN: Oct. 21 at 6 p.m.
Oct. 27 at 6 p.m.
WHERE: Meeting by Web Conference
[Click Here](#) for Information and to Sign Up to Speak

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NORTH CAROLINA REGISTER

VOLUME 35 • ISSUE 07 • Pages 702 – 821

October 1, 2020

I. EXECUTIVE ORDERS	
Executive Order No. 160-163	702 – 734
II. IN ADDITION	
Health and Human Services, Department of – Notice of Application	735
III. PROPOSED RULES	
Agriculture and Consumer Services, Department of	
Plant Conservation Board	736 – 754
Public Safety, Department of	
Alcoholic Beverage Control Commission	754 – 755
Environmental Quality, Department of	
Environmental Management Commission	755 – 758
Marine Fisheries Commission	758 – 779
Wildlife Resources Commission	779 – 782
Public Instruction, Department of	
Education, State Board of	782 – 783
Secretary of State, Department of	
Department	783 – 784
Occupational Licensing Boards and Commissions	
Landscape Contractors' Licensing Board	784 – 785
IV. APPROVED RULES	786 – 813
Agriculture and Consumer Services, Department of	
Pesticide Board	
Natural and Cultural Resources, Department of	
Department	
Public Safety, Department of	
Crime Victims Compensation Commission	
Environmental Quality, Department of	
Environmental Management Commission	
State Board of Education	
Education, State Board of	
Occupational Licensing Boards and Commissions	
General Contractors, Licensing Board for	
Cosmetic Art Examiners, Board of	
Dental Examiners, Board of	
Medical Board	
State Human Resources Commission	
State Human Resources Commission	
V. RULES REVIEW COMMISSION	814 – 818
VI. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	819 – 821

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

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984-236-1947 FAX

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984-236-1935

Fiscal Notes & Economic Analysis

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NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

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
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
34:20	04/15/20	03/24/20	04/30/20	06/15/20	06/22/20	07/16/20	08/01/20	01/10/21
34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
35:01	07/01/20	06/10/20	07/16/20	08/31/20	09/21/20	10/15/20	11/01/20	03/28/21
35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
35:03	08/03/20	07/13/20	08/18/20	10/02/20	10/20/20	11/19/20	12/01/20	04/30/21
35:04	08/17/20	07/27/20	09/01/20	10/16/20	10/20/20	11/19/20	12/01/20	05/14/21
35:05	09/01/20	08/11/20	09/16/20	11/02/20	11/20/20	12/17/20	01/01/21	05/29/21
35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

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.

PROPOSED RULES

General	50% of the otherwise applicable fee	\$25
<u>General Title V ACI</u>	<u>10% of the otherwise applicable fee</u>	

(Note: fees shaded in gray are fees for calendar year 2020, not adjusted for inflation for 2021)

Permit application fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204. ~~The current permit application fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.~~

(e) The current annual permit fees, annual complexity fees, and permit application fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.

~~(f)~~ If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

~~(g)~~ The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not ~~include~~ include the amount of actual emissions of each pollutant that exceeds 4,000 tons per year and the actual emissions of pollutants listed in Subparagraphs (1) through (4) of this Paragraph as follows:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard pursuant to Section 112(r) of the federal Clean Air Act (accidental releases); and
- ~~(4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.~~
- (4) greenhouse gases.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

~~(h)~~ The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531 (Sources in Nonattainment Areas), 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in an area designated in 40 CFR 81.334 as nonattainment, or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

~~(i)~~ The facility category, Title V (PSD or NSR/NAA), in the permit application fees table in Paragraph ~~(b)(d)~~ of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531.

~~(j)~~ The facility category, Title V (PSD and NSR/NAA), in the permit application fees table in Paragraph ~~(b)(d)~~ of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 and .0531.

~~(k)~~ Minor modification permit applications that are group processed shall require the payment of only one permit application fee per facility included in the group.

~~(l)~~ No permit application fee shall be required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change pursuant to 15A NCAC 02Q .0523 (Changes Not Requiring Permit Revisions), or for a construction date change, a test date change, a reporting procedure change, or a similar change.

~~(m)~~ The permit application fee paid for modifications pursuant to 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were subject to 15A NCAC 02Q .0500, Title V Procedures.

~~(n)~~ An applicant who files permit applications pursuant to 15A NCAC 02Q .0504 shall pay an application fee equal to the application fee for the permit required pursuant to 15A NCAC 02Q .0500; this fee shall cover both applications, provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued pursuant to 15A NCAC 02Q .0500 are established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "Minor Modification" in the table in Paragraph ~~(b)(d)~~ of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d).

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03R .0104, .0117, readopt with substantive changes the rules cited as 15A NCAC 03O .0201, .0202, .0204; 03R .0105; 18A .0146, .0150, .0154, .0155, .0159, .0160, .0167, .0171, .0172, .0179, .0180, .0189, .0190, .0704, .0901-.0907, .0909, .0913, .0914, readopt without substantive changes the rules cited as 15A NCAC 03Q .0101-.0109; 18A .0140-.0143, .0163, .0169, .0170, .0188, and repeal through readoption the rules cited as 15A NCAC 18A .0431, .0908, and .0910.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/mf/mfc-proposed-rules>

Proposed Effective Date:

15A NCAC 03O .0204; 03Q .0107: automatically subject to legislative review (S.L. 2019-198)

All other rules: April 1, 2021

Public Hearing: In an abundance of caution and to address protective measures to help prevent the spread of COVID-19, these public hearings will be held by webinar.

Date: October 21, 2020

Time: 6:00 p.m.

Location: WebEx Events meeting link for Oct. 21:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e9643b0b8096a03f9e8e7aedc69f00aa5>

Event number for Oct. 21: 171 042 8393 Event password for Oct. 21: 1234

Date: October 27, 2020

Time: 6:00 p.m.

Location: WebEx Events meeting link for Oct. 27:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e9c38fe4cfb0d9fc1c4e4d02a818988ce>

Event number for Oct. 27: 171 724 2813 Event password for Oct. 27: 1234

Reason for Proposed Action:

15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES

15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND FRANCHISES

In accordance with G.S. 150B-21.3A and Session Law 2019-37, proposed amendments to these three rules aim to reduce user conflict issues while supporting a productive shellfish aquaculture industry. Specifically, the amendments proposed would increase setback limits from developed shorelines for new shellfish leases, limit the allowable number of corners for demarcating shellfish leases to simplify polygon shape, set new criteria for shellfish lease stakes and signage to alleviate navigation concerns, and initiate a new leaseholder training program that emphasizes user conflict reduction strategies. Session Law 2019-37 was passed with the explicit goal of providing increased support to the state's shellfish aquaculture industry. Central to this was the goal of understanding user conflict issues of shellfish leasing and amending state regulations based on these findings. Section 9 of the law required the N.C. Department of Environmental Quality, N.C. Division of Marine Fisheries, and the N.C. Marine Fisheries Commission to study how to reduce user conflict related to shellfish cultivation leases, and to adopt rules and reform internal operating procedures consistent with the findings of the study. Proposed rule amendments are based on the results of the study.

- 15A NCAC 03Q .0101 SCOPE AND PURPOSE**
- 15A NCAC 03Q .0102 INLAND FISHING WATERS**
- 15A NCAC 03Q .0103 COASTAL FISHING WATERS**
- 15A NCAC 03Q .0104 JOINT FISHING WATERS**

- 15A NCAC 03Q .0105 POSTING DIVIDING LINES**
 - 15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS**
 - 15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS**
 - 15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT WATERS**
 - 15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING**
- In accordance with G.S. 150B-21.3A, these nine rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters are proposed for re-adoption by the N.C. Marine Fisheries Commission with no changes.

- 15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS**
 - 15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS**
- In accordance with G.S. 150B-21.3A (15A NCAC 03R .0105) and the N.C. Shrimp Fishery Management Plan (FMP) Amendment 1 (both rules), proposed amendments to these two rules reclassify nine Special Secondary Nursery Areas (SSNAs) as Secondary Nursery Areas (SNAs). In 2015, the N.C. Marine Fisheries Commission adopted the Shrimp FMP Amendment 1. One of the final management measures to implement after adoption of Amendment 1 was to evaluate changing the designation of nine SSNAs that have not been opened to trawling since at least 2004 to SNAs. The evaluation was undertaken and shows these nine sites have all been functioning as SNAs for nearly 30 years. None of these sites has been opened for trawling since 1991 at the latest, except for one site (Newport River), which was opened by proclamation in 2004. These changes would convert approximately 8,670 acres of current SSNA waters to SNAs, making them subject to all standard SNA gill net attendance requirements under 03R .0112(b)(1). The two practical differences between SNAs and SSNAs relates to trawling and small mesh gill net attendance. In SNAs, it is unlawful to use trawl nets for any purpose, but since none of the proposed SSNAs has been opened to trawling since at least 2004, the only impactful management change is the new requirements related to small mesh gill net attendance in all but one of these waters. (Scranton Creek would see no changes in its small mesh gill net attendance requirements.) Appendix III of the fiscal analysis of the proposed rules contains tables and figures for the nine areas that shows the gill net attendance requirements that would be in place once the rule changes become effective.

- 15A NCAC 03R .0117 OYSTER SANCTUARIES**
- This rule is proposed for amendment consistent with the N.C. Oyster Fishery Management Plan. Rule amendments are proposed to add the boundaries of the five most recently developed oyster sanctuaries (i.e., Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island) and update boundaries for three existing sanctuaries (i.e., Neuse River, West Bluff, and Gibbs Shoal). Boundaries delineating the area for two existing sanctuaries (i.e., Ocracoke and Clam Shoal) are proposed to be

removed from rule as they no longer function as biologically productive oyster sanctuaries. The term "sanctuary" refers to reefs protected from oyster harvest in N.C. Marine Fisheries Commission (MFC) rule or by proclamation issued by the Fisheries Director under the authority of MFC rule.

- 15A NCAC 18A .0140 FLOORS
- 15A NCAC 18A .0141 WALLS AND CEILINGS
- 15A NCAC 18A .0142 LIGHTING
- 15A NCAC 18A .0143 VENTILATION
- 15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION
- 15A NCAC 18A .0169 FREEZING
- 15A NCAC 18A .0170 SHIPPING
- 15A NCAC 18A .0188 HAZARD ANALYSIS

In accordance with G.S. 150B-21.3A, these eight rules that relate to standards for commercial shellfish sanitation and processing procedures are proposed for readoption with no changes.

- 15A NCAC 18A .0146 PREMISES
- 15A NCAC 18A .0150 SEWAGE DISPOSAL
- 15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES
- 15A NCAC 18A .0155 SUPPLY STORAGE
- 15A NCAC 18A .0159 SEPARATION OF OPERATIONS
- 15A NCAC 18A .0160 RAW CRUSTACEA RECEIVING AND REFRIGERATION
- 15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF
- 15A NCAC 18A .0171 WHOLE CRUSTACEA OR CRUSTACEA PRODUCTS
- 15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS
- 15A NCAC 18A .0179 RECALL PROCEDURE
- 15A NCAC 18A .0180 SAMPLING AND TESTING
- 15A NCAC 18A .0189 HACCP PLAN
- 15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS

In accordance with G.S. 150B-21.3A, these 13 rules that relate to standards for commercial shellfish sanitation and processing procedures are proposed for readoption with minor changes, such as updates to punctuation, agency names, capitalization, acronym introduction, and a missing degree symbol for a temperature provided.

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

In accordance with G.S. 150B-21.3A, this rule is proposed for repeal, as it is redundant with rule 15A NCAC 18A .0904.

- 15A NCAC 18A .0704 LABORATORY PROCEDURES
- 15A NCAC 18A .0914 LABORATORY PROCEDURES

In accordance with G.S. 150B-21.3A, the proposed amendments replace an outdated set of standards for the types of laboratories and laboratory methods that can be used to support the North Carolina Shellfish Sanitation and Recreational Water Quality Section with a set of standards that will bring North Carolina rules into agreement with current national standards, and will better protect the health of shellfish consumers. These amendments will also provide North Carolina with additional

flexibility regarding the types of laboratory tests that are permissible for use within the program.

15A NCAC 18A .0901 DEFINITIONS

In accordance with G.S. 150B-21.3A, the proposed amendments update definitions to conform with proposed changes to other rules in 15A NCAC 18A .0900.

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

In accordance with G.S. 150B-21.3A, the proposed amendments eliminate the interchangeable use of two differently defined terms, "shellfish growing waters" and "shellfish growing areas", in order to improve the clarity of what this rule requires.

15A NCAC 18A .0903 SANITARY SURVEYS

15A NCAC 18A .0910 RECLASSIFICATION

In accordance with G.S. 150B-21.3A, the proposed amendments update the reporting requirements that need to be met in order to classify shellfish growing waters or to modify existing classifications, and to bring those requirements in line with the national standards. The proposed amendments include details on the required frequency of reporting as well as the required contents of each report. Rule .0910 is proposed for repeal, with the requirements of the rule being moved into .0903 instead, for improved clarity and organization.

15A NCAC 18A .0904 APPROVED WATERS

In accordance with G.S. 150B-21.3A, the proposed amendments replace an outdated set of standards used for the classification of shellfish harvesting waters with a set of standards that would bring North Carolina rules into agreement with current national requirements, and would better protect the health of shellfish consumers. These amendments would also provide North Carolina with additional flexibility regarding the types of laboratory tests that are permissible for use in the classification of shellfish growing waters.

15A NCAC 18A .0905 CONDITIONALLY APPROVED WATERS

In accordance with G.S. 150B-21.3A, the proposed amendments define the criteria that must be met in order to classify shellfish growing waters with the conditionally approved classification. They would also bring North Carolina rules into agreement with current national requirements by defining the required contents of management plans that must be developed for any conditionally approved waters, and by adding in the requirement that all conditionally approved growing waters be re-evaluated on an annual basis to ensure that the classification remains appropriate.

15A NCAC 18A .0906 RESTRICTED AREAS

In accordance with G.S. 150B-21.3A, the proposed amendments define the criteria that must be met in order to classify shellfish growing waters with the restricted classification. They would also bring North Carolina rules into agreement with current national requirements by defining the specific bacteriological standards that must be met for restricted waters to be used as a source of shellstock for depuration.

15A NCAC 18A .0907 PROHIBITED WATERS
15A NCAC 18A .0908 UNSURVEYED AREAS
15A NCAC 18A .0909 BUFFER ZONE

In accordance with G.S. 150B-21.3A, the proposed amendments replace an outdated set of standards and requirements used for the prohibited classification of shellfish harvesting waters with a set of standards and requirements that would bring North Carolina rules into agreement with current national requirements, and would better protect the health of shellfish consumers. These modifications would also reduce redundancy between rules. The requirements contained in .0908 are redundant with and better suited for inclusion in .0907, so .0908 is proposed for repeal.

15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY

In accordance with G.S. 150B-21.3A, the proposed amendments update the language in the rule to reflect that the Shellfish Sanitation and Recreational Water Quality Section is now part of the Division of Marine Fisheries, instead of the Division of Environmental Health.

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 http://portal.ncdenr.org/web/mf/mfc-proposed-rules.

Comment period ends: November 30, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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 030 - LICENSES, LEASES, FRANCHISES AND PERMITS

SECTION .0200 - LEASES AND FRANCHISES

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

(a) 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 cultivation purposes:

- (1) the proposed 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 lease area shall not be closer than 100 250 feet to from a developed shoreline, 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; and shoreline. For the purposes of this Rule, a water-dependent shore-based structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;
(3) the proposed lease area shall not be closer than 250 feet to an existing shellfish lease;
(4) the proposed lease area, either alone or when considered cumulatively with existing shellfish leases in the area, shall not interfere with navigation or with existing, traditional uses of the area; and
(5) the proposed lease area shall not be less than one-half acre and shall not exceed 10 acres.

(b) To be suitable for leasing for aquaculture purposes, water columns superjacent to leased bottom shall meet the standards in G.S. 113-202.1 and water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2.

(c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases 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) Water column leases 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 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.

(e) The following standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:

- (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" shall be included in the lease and franchise reports required by Rule .0207 of this Section.
- (2) If more than one 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 lease or franchise. Shellfish transplanted between leases or franchises shall be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. The lease or franchise 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. 202.2 to be deemed in compliance for shellfish bottom leases. The lease or franchise 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. 202.2 to be deemed in compliance for water column leases.
- (4) All bushel measurements shall be in standard U.S. bushels.
- (5) 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 rate averages shall be computed irrespective of transfer of the lease or franchise. The production and marketing rates shall be averaged for the following situations using the time periods described:
 - (A) for an initial 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 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 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 bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.
- (7) In the event that a portion of an existing lease or franchise is obtained by a new owner, 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) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries.

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

15A NCAC 030 .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

(a) Application forms are available from the ~~Division's office headquarters at~~ Division of Marine Fisheries, 3441 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for shellfish bottom and water column leases. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the location of the proposed lease with detail sufficient to permit on-site identification and ~~must~~ shall meet the information requirements pursuant to G.S. 113-202(d).

(b) As a part of the application, the applicant shall submit a ~~management plan~~ Shellfish Lease Management Plan for the area to be leased on a form provided by the Division ~~which meets the following standards:~~ that shall:

- (1) ~~States state~~ States state the methods through which the applicant will cultivate and produce shellfish consistent with the minimum requirements ~~set forth in 15A NCAC 030 .0201;~~ in accordance with Rule .0201 of this Section;
- (2) ~~States state~~ States state the time intervals during which various phases of the cultivation and production plan will be achieved;
- (3) ~~States state~~ States state the materials and techniques that will be utilized in management of the lease;
- (4) ~~Forecasts forecast~~ Forecasts forecast the results expected to be achieved by the management activities; ~~and~~

- (5) ~~Describes~~ describe the productivity of any other leases or franchises held by the ~~applicant~~ applicant; and
- (6) state the locations of each corner defining the area to be leased with no more than eight corners.

(c) The completed application, map or diagram, and ~~management plan~~ Shellfish Lease Management Plan for the requested lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete ~~and submit an examination, with a minimum of 70 percent correct answers, based on an educational package~~ the Shellfish Aquaculture Education Program provided by the ~~Division of Marine Fisheries~~ Division. The ~~examination~~ Shellfish Aquaculture Education Program shall ~~demonstrate the applicant's knowledge of~~ provide the applicant information on shellfish aquaculture including:

- ~~(1) the shellfish lease application process;~~
- ~~(2) shellfish lease planting and production requirements;~~
- ~~(3) lease marking requirements;~~
- ~~(4) lease fees;~~
- ~~(5) shellfish harvest area closures due to pollution;~~
- ~~(6) safe handling practices;~~
- ~~(7) lease contracts and renewals;~~
- ~~(8) lease termination criteria; and~~
- ~~(9) shellfish cultivation techniques.~~
- (1) shellfish lease application process;
- (2) shellfish lease requirements and techniques;
- (3) shellfish sanitation and National Shellfish Sanitation Program requirements;
- (4) shellfish harvest requirements;
- (5) aquaculture permits;
- (6) best management practices; and
- (7) shellfish lease user conflict avoidance.

(e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall identify the area for which a lease is requested with stakes at each corner in accordance with ~~15A NCAC 030 .0204(a)(1)(A)~~ Rule .0204(a)(1)(A) of this Section. The applicant shall attach to each stake a sign, provided by the Division containing the name of the applicant, the date the application was filed, and the estimated acres. The applicant shall be responsible for ensuring the sign remains in place until the lease application process is completed.

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

15A NCAC 030 .0204 MARKING SHELLFISH LEASES AND WATER COLUMN LEASES AND FRANCHISES

(a) All shellfish bottom leases, franchises, and water column leases shall be marked by the leaseholder or franchise holder as follows:

- (1) Shellfish bottom leases and franchises shall be marked by:
 - (A) ~~Stakes~~ stakes of wood or plastic material ~~at least three inches in diameter~~ no less than three inches in diameter and no more than 12 inches in diameter at the water level mean high water mark and extending at least four feet above the ~~mean high water mark~~ mark for each corner, except stakes more than 12 inches in diameter approved as part of a Coastal Area Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 shall be allowed. The stakes shall be firmly jettied or driven into the bottom at each ~~corner~~ corner as set forth in Rule .0202(b)(6) of this Section.
 - (B) ~~Signs~~ signs displaying the number of the lease or franchise and the name of the owner printed in letters at least three inches high must be firmly attached to each corner stake.
 - (C) yellow light reflective tape or yellow light reflective devices on each corner stake. The yellow light reflective tape or yellow light reflective devices shall be affixed to each corner stake, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
 - ~~(C)(D)~~ Supplementary ~~supplementary~~ stakes of wood or plastic ~~material~~ material ~~no less than three inches in diameter and no more than four inches in diameter, not farther apart than 50 yards~~ 150 feet or closer together than 50 feet and extending at least four feet above the mean high water mark, must shall be placed along each boundary, except when such would interfere if doing so interferes with the use of traditional navigation channels.
- (2) ~~Water~~ Shellfish water column leases shall be marked ~~by anchoring two yellow buoys, meeting the material and minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the area or by larger buoys, posts and by signs giving notice and providing caution in addition to the required signs as identified and approved by the Secretary in the Management Plan.~~ management plan.
 - (b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management plan, ~~must shall~~ shall conform to ~~Subparagraph (a)(1)(C)~~ Part (a)(1)(D) of this Rule and may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200 square

feet constitutes use of the water column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2. (c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

~~(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary pursuant to Departmental Rule 15A NCAC 1G .0207 that a G.S. 113-205 claim to a marked area has been denied.~~

~~(e)~~(d) It is shall be unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including, but not limited to, fishing, hunting, swimming, ~~wading~~ wading, and navigation.

~~(f)~~(e) The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease not marked in accordance with Paragraph (a) of this Rule.

Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205.

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

SECTION .0100 - GENERAL REGULATIONS: JOINT

15A NCAC 03Q .0101 SCOPE AND PURPOSE

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

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

15A NCAC 03Q .0102 INLAND FISHING WATERS

Inland fishing waters are all inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to inland fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation

and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife enforcement officers.

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

15A NCAC 03Q .0103 COASTAL FISHING WATERS

Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to coastal fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulations and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except that inland game fish (exclusive of spotted seatrout, weakfish, and striped bass) are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal waters are enforced by fisheries enforcement officers. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife enforcement officers unless otherwise agreed to by the Wildlife Resources Commission.

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

15A NCAC 03Q .0104 JOINT FISHING WATERS

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

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

15A NCAC 03Q .0105 POSTING DIVIDING LINES

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

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

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

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

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

- (1) all laws and regulations pertaining to inland game fishes,
- (2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,
- (3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

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

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

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

- (1) Striped Bass
 - (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
 - (b) It is unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
 - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
 - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
 - (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate,

per person per day, regardless of the number of management areas fished.

(f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.

(g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.

(2) Lake Mattamuskeet:

(a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.

(b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.

(3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.

(4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

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

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

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

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

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

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

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

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

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

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

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

- (1) Roanoke Sound:
Inner Shallowbag Bay - west of a line beginning on the northeast shore at a point 35° 54.6729' N – 75° 39.8099' W; running southerly to the southeast shore to a point 35° 54.1722' N – 75° 39.6806' W;
- (2) ~~In~~ in the Pamlico Long Sound Area:
 - (a) Long Shoal River - north of a line beginning at the 5th Avenue Canal at a point 35° 35.2120' N – 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N – 75° 51.2000' W;

- (b) Pains Bay - east of a line beginning on Pains Point at a point 35° 35.0666' N – 75° 51.2000' W; running southerly to Rawls Island to a point 35° 34.4666' N – 75° 50.9666' W; running easterly to the east shore to a point 35° 34.2309' N – 75° 50.2695' W;
- (c) WYsocking Bay - northwest of a line beginning at Benson Point at a point 35° 22.9684' N – 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N – 76° 01.3155' W;
- (d) Juniper Bay-Cunning Harbor - north of a line beginning on the west shore of Juniper Bay at a point 35° 20.6217' N – 76° 15.5447' W; running easterly to a point 35° 20.4372' N – 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point 35° 20.3413' N – 76° 12.3378' W;
- (e) Swanquarter Bay - north of a line beginning at The Narrows at a point 35° 20.9500' N – 76° 20.6409' W; running easterly to the east shore to a point 35° 21.5959' N – 76° 18.3580' W;
- (f) Deep Cove - The Narrows - north and east of a line beginning on the west shore at a point 35° 20.9790' N – 76° 23.8577' W; running southeasterly to Swanquarter Island to a point 35° 20.5321' N – 76° 22.7869' W; and west of a line at The Narrows beginning on the north shore to a point 35° 20.9500' N – 76° 20.6409' W; running southerly to Swanquarter Island to a point 35° 20.7025' N – 76° 20.5620' W;
- (g) Rose Bay - north of a line beginning on Long Point at a point 35° 23.3404' N – 76° 26.2491' W; running southeasterly to Drum Point to a point 35° 22.4891' N – 76° 25.2012' W;
- (h) Spencer Bay - northwest of a line beginning on Roos Point at a point 35° 22.3866' N – 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N – 76° 26.2491' W;
- (i) Abel Bay - northeast of a line beginning on the west shore at a point 35° 23.6463' N – 76° 31.0003' W; running southeasterly to the east shore to a point 35° 22.9353' N – 76° 29.7215' W;
- (j) Mouse Harbor - west of a line beginning on Persimmon Tree Point at a point 35° 18.3915' N – 76° 29.0454' W; running southerly to Yaupon

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| <p>(k) Hammock Point to a point 35° 17.1825' N – 76° 28.8713' W;
Big Porpoise Bay - northwest of a line beginning on Big Porpoise Point at a point 35° 15.6993' N – 76° 28.2041' W; running southwesterly to Middle Bay Point to a point 35° 14.9276' N – 76° 28.8658' W;</p> <p>(l) Middle Bay - west of a line beginning on Deep Point at a point 35° 14.8003' N – 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N – 76° 29.6123' W;</p> <p>(m) Jones Bay - west of a line beginning on Mink Trap Point at a point 35° 13.4968' N – 76° 31.1040' W; running southerly to Boar Point to a point 35° 12.3253' N – 76° 31.2767' W; and</p> <p>(n) It <u>in</u> the Bay River Area:</p> <p style="padding-left: 20px;">(i) Bonner Bay - southeast of a line beginning on the west shore at a point 35° 09.6281' N – 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N – 76° 35.2587' W; and</p> <p style="padding-left: 20px;">(ii) Gales Creek-Bear Creek - north and west of a line beginning on Sanders Point at a point 35° 11.2833' N – 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N – 76° 34.2833' W;</p> <p>(3) It <u>in</u> the Pamlico and Pungo Rivers Area:</p> <p style="padding-left: 20px;">(a) Pungo River - north of a line beginning on the west shore at a point 35° 32.2000' N – 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N – 76° 28.1500' W;</p> <p style="padding-left: 20px;">(b) <u>Pungo Creek - west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;</u></p> <p style="padding-left: 20px;">(c) <u>Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N – 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N – 76° 28.6766' W;</u></p> <p style="padding-left: 20px;">(d) <u>Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;</u></p> | <p>(b)(e) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N – 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N – 76° 31.9641' W;</p> <p>(e)(f) Pamlico River - west of a line beginning on Ragged Point at a point 35° 27.5768' N – 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N – 76° 55.5253' W;</p> <p>(d)(g) North Creek - north of a line beginning on the west shore at a point 35° 25.3988' N – 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N – 76° 39.6712' W;</p> <p>(h) <u>South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W;</u></p> <p>(i) <u>Bond Creek/Muddy Creek - south of a line beginning on Fork Point at a point 35° 20.7534' N – 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N – 76° 41.4645' W;</u></p> <p>(e)(j) It <u>in</u> the Goose Creek Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N – 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N – 76° 37.0965' W; and</p> <p>(f)(k) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N – 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N – 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N – 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N – 76° 31.7226' W;</p> <p>(4) It <u>in</u> the Neuse River Area:</p> <p style="padding-left: 20px;">(a) Lower Broad Creek - west of a line beginning on the north shore at a point 35° 05.8314' N – 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N – 76° 35.7249' W;</p> <p style="padding-left: 20px;">(b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N – 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N – 76° 41.9961' W;</p> |
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- (c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N – 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N – 76° 45.4140' W;
- (d) Goose Creek - north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N – 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N – 76° 56.0092' W;
- (e) Upper Broad Creek - northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N – 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N – 76° 56.7865' W;
- (f) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 54.5424' N – 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N – 76° 45.4022' W; and
- (g) ~~It~~ in the Adams Creek Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N – 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N – 76° 38.8153' W;
- (5) Newport River - west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N – 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N – 76° 43.3296' W;
- ~~(5)(6)~~ Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
- ~~(6)(7)~~ Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
- ~~(7)(8)~~ Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N – 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N – 77° 42.2400' W;
- ~~(8)(9)~~ Pages Creek - all waters west of a line beginning on the north shore at a point 34° 16.1610' N – 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N – 77° 46.1670' W;
- ~~(9)(10)~~ Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N – 77° 49.1230' W; running southerly near the dredged channel to a point 34° 12.4130' N – 77° 49.2110' W; ~~and~~
- (11) Cape Fear River - all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the Intracoastal Waterway and the Cape Fear River ship channel at a point 34° 01.5780' N – 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N – 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N – 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N – 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to point of origin;
- (12) Lockwood Folly River - all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the Intracoastal Waterway near Intracoastal Waterway Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W;
- (13) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N – 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N – 78° 22.8670' W; and
- ~~(10)(14)~~ Davis Creek - all waters east of a line beginning on Horse Island at a point 33° 55.0160' N – 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N – 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N – 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the ~~IWW~~ Intracoastal Waterway and Davis Canal to a point 33° 55.2690' N – 78° 11.6550' W.

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

15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS

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

- (1) Roanoke Sound:
 - (a) Outer Shallowbag Bay - west of a line beginning on Baum Point at a point 35° 55.1461' N – 75° 39.5618' W; running southeasterly to Ballast Point to a point 35° 54.6250' N – 75° 38.8656' W; including the canal on the southeast shore of Shallowbag Bay; and
 - (b) Kitty Hawk Bay/Buzzard Bay - within the area designated by a line beginning at a point on the east shore of ~~Collington~~ Collington Creek at a point 36° 02.4360' N – 75° 42.3189' W; running westerly to a point 36°

- 02.6630' N – 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N – 75° 42.3889' W; running southwesterly to a point 36° 02.1483' N – 75° 42.4329' W; running along the shoreline to a point 36° 01.6736' N – 75° 42.5313' W; running southwesterly to a point 36° 01.5704' N – 75° 42.5899' W; running along the shoreline to a point 36° 00.9162' N – 75° 42.2035' W; running southeasterly to a point 36° 00.8253' N – 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N – 75° 41.7284' W; running southwesterly to a point 35° 59.9597' N – 75° 41.7682' W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N – 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N – 75° 32.7361' W; running northerly along the shoreline to the point of beginning;
- (2) ~~In the Pamlico and Pungo rivers Area:~~
- (a) ~~Pungo Creek – west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;~~
- (b) ~~Scranton Creek – south and east of a line beginning on the west shore at a point 35° 30.6810' N – 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N – 76° 28.6766' W;~~
- (c) ~~Slade Creek – east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;~~
- (d) ~~South Creek – west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W; and~~
- (e) ~~Bond Creek/Muddy Creek – south of a line beginning on Fork Point 35° 20.7534' N – 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N – 76° 41.4645' W;~~
- (3)(2) ~~In~~ in the West Bay Area:
- (a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N – 76° 24.0947' W; running easterly to the east shore to a point 34° 57.4871' N – 76° 23.0737' W;
- (b) Long Bay-Ditch Bay - west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N – 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point 34° 57.2120' N – 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point 34° 56.7633' N – 76° 26.3927' W; and
- (c) Turnagain Bay - south of a line beginning on the west shore at a point 34° 59.4065' N – 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N – 76° 29.3557' W;
- (4)(3) ~~In~~ in the Core Sound Area:
- (a) Cedar Island Bay - northwest of a line beginning near the gun club dock at a point 34° 58.7203' N – 76° 15.9645' W; running northeasterly to the south shore to a point 34° 57.7690' N – 76° 16.8781' W;
- (b) Thorofare Bay-Barry Bay - northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N – 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N – 76° 19.1908' W;
- (c) Nelson Bay - northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N – 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N – 76° 23.7620' W;
- (d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N – 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N – 76° 25.0534' W; and
- (e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N – 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N – 76° 28.7955' W;
- (5)(4) ~~In~~ in the North River Area:
- (a) North River - north of a line beginning on the west shore at a point 34° 46.0383' N – 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N – 76° 35.4933' W; and
- (b) Ward Creek - east of a line beginning on the north shore at a point 34° 46.2667' N – 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N – 76° 35.1767' W;

- (6) ~~Newport River—west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N—76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N—76° 43.3296' W;~~
- (7)(5) New River - all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N – 77° 23.9940' W; running southerly to the south side of the bridge at a point 34° 34.6000' N – 77° 23.9710' W;
- (8)(6) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N – 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N – 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N – 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34° 32.0340' N – 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N – 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N – 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N – 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin; and
- (9)(7) Intracoastal Waterway - all waters in the ~~IWW~~ Intracoastal Waterway maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the ~~IWW~~ Intracoastal Waterway maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf ~~City; City.~~
- (10) ~~Cape Fear River—all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the IWW and the Cape Fear River ship channel at a point 34° 01.5780' N—77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N—77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N—77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N—77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to point of origin;~~
- (11) ~~Lockwood Folly River—all waters north of a line beginning on Howells Point at a point 33° 55.3680' N—78° 12.7930' W and running in a westerly direction along the IWW near IWW Marker "46" to a point 33° 55.3650' N—78° 13.8500' W; and~~
- (12) ~~Saucepan Creek—all waters north of a line beginning on the west shore at a point 33° 54.6290' N—78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N—78° 22.8670' W.~~
- Authority G.S. 113-134; 113-182; 143B-289.52.*
- 15A NCAC 03R .0117 OYSTER SANCTUARIES**
The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:
- (1) ~~Croatan Sound area: 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.~~
- (2)(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.~~
- (a)(b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
- (c) ~~Pea Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3680' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.~~
- (d) ~~Long Shoal: within the area described by a line beginning at a point 35° 33.8600' N - 75° 49.9000' W; running southerly to a point 35° 33.8600' N - 75° 49.7670' W; running westerly to a point 35° 33.7510' N - 75° 49.7670' W; running northerly to a point 35° 33.7510' N - 75° 49.9000' W; running easterly to the point of beginning.~~
- (b)(c) Gibbs Shoal: within the area described by a line beginning at a point 35°

- ~~27.3557' N - 75° 55.8434' W; 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1732' N - 75° 55.8434' W; 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1732' N - 75° 56.0735' W; 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3557' N - 75° 56.0735' W; 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.~~
- (e)(f) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
- (f)(g) West Bluff: within the area described by a line beginning at a point ~~35° 18.3000' N - 76° 10.0890' W; 35° 18.3160' N - 76° 10.2960' W; running southerly to a point 35° 18.1460' N - 76° 10.0890' W; 35° 18.3160' N - 76° 10.0690' W; running westerly to a point 35° 18.1460' N - 76° 10.2760' W; 35° 18.1290' N - 76° 10.0690' W; running northerly to a point 35° 18.3000' N - 76° 10.2760' W; 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.~~
- (e) Clam Shoal: within the area described by a line beginning at a point 35° 17.4800' N - 75° 37.1800' W; running southerly to a point 35° 17.1873' N - 75° 37.1800' W; running westerly to a point 35° 17.1873' N - 75° 37.4680' W; running northerly to a point 35° 17.4800' N - 75° 37.4680' W; running easterly to the point of beginning.
- (f)(h) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
- (i) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N - 76° 27.5040' W; running southerly to a point 35° 05.6020' N - 76° 26.7650' W; running westerly to a point 35° 05.4850' N - 76° 26.7640' W; running northerly to a point 35° 05.4990' N - 76° 27.5030' W; running easterly to the point of beginning.
- (g) ~~Ocracoke area: within the area described by a line beginning at a point 35° 10.8150' N - 75° 59.6320' W; running southerly to a point 35° 10.6320' N - 75° 59.6320' W; running westerly to a point 35° 10.6320' N - 75° 59.8530' W; running northerly to a point 35° 10.8150' N - 75° 59.8530' W; running easterly to the point of beginning.~~
- (j) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3860' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
- (h)(k) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- (3)(2) Neuse River: River area:
- (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76° 30.9840' W; running southerly to a point 35° 02.6940' N - 76° 30.7940' W; running westerly to a point 35° 02.5380' N - 76° 30.7940' W; running northerly to a point 35° 02.5380' N - 76° 30.9840' W; running easterly to the point of beginning.
- (b) Neuse River: within the area described by a line beginning at a point ~~35° 00.4742' N - 76° 31.9550' W; 35° 00.4910' N - 76° 31.9350' W; running southerly to a point 35° 00.3920' N - 76° 31.9550' W; 35° 00.3750' N - 76° 31.9350' W; running westerly to a point 35° 00.3920' N - 76° 32.0550' W; 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35° 00.4742' N - 76° 32.0550' W; 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.

SUBCHAPTER 18A – SANITATION

SECTION .0100 - HANDLING: PACKING: AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0140 FLOORS

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

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

15A NCAC 18A .0141 WALLS AND CEILINGS

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

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

15A NCAC 18A .0142 LIGHTING

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

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

15A NCAC 18A .0143 VENTILATION

All rooms and areas shall be ventilated.

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

15A NCAC 18A .0146 PREMISES

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

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

15A NCAC 18A .0150 SEWAGE DISPOSAL

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

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

15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES

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

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

15A NCAC 18A .0155 SUPPLY STORAGE

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

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

15A NCAC 18A .0159 SEPARATION OF OPERATIONS

- (a) Facility design shall provide for continuous flow of raw materials and product to prevent contamination by exposure to areas involved in earlier processing steps, ~~refuse~~ refuse, or other areas subject to contamination.
(b) The following processes shall be carried out in separate rooms or areas:

- (1) ~~Raw raw~~ crustacea receiving or ~~refrigeration~~ refrigeration;
(2) ~~Crustacea cooking~~ crustacea cooking;
(3) ~~Cooked cooked~~ crustacea ~~air-cool~~ air-cool;
(4) ~~Cooked cooked~~ crustacea ~~refrigeration~~ refrigeration;
(5) ~~Picking~~ picking;
(6) ~~Packing~~ packing;
(7) ~~Picked picked~~ crustacea meat ~~refrigeration~~ refrigeration;
(8) ~~Pasteurizing/thermal processing~~ pasteurizing or thermal processing;
(9) ~~Machine picking~~ machine picking;
(10) ~~Repacking~~ repacking; and
(11) ~~Other other~~ processes when carried out in conjunction with the cooking of crustacea or crustacea meat.

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

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

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

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

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

15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION

(a) The cooked crustacea cooler shall be large enough to store all cooked crustacea and maintain a minimum temperature of 40° F (4.4° C). The cooler shall open directly into the picking room or into a clean, enclosed area leading into the picking room.

(b) Cooked crustacea shall be stored at a temperature between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature if not immediately processed. The cooler shall be equipped with an accurate, operating thermometer.

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

15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF

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

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

15A NCAC 18A .0169 FREEZING

(a) If crustacea or crustacea meat is to be frozen, the code date shall be followed by the letter "F."

(b) Frozen crustacea or crustacea meat shall be stored at a temperature of 0° F (-18° C) or less.

(c) The frozen storage rooms shall be equipped with an accurate, operating thermometer.

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

15A NCAC 18A .0170 SHIPPING

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

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

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

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

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

15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS

(a) Vehicles used to transport cooked claws shall be mechanically refrigerated, enclosed, tightly constructed, kept ~~clean~~ clean, and equipped with an operating thermometer.

(b) Cooked crab claws shall be stored and transported between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature.

(c) All vehicles shall be approved by the Division of Marine Fisheries prior to use.

(d) Cooked claw shipping containers shall be marked for intended use, ~~cleaned~~ cleaned, and sanitized prior to use and approved by the Division.

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

15A NCAC 18A .0179 RECALL PROCEDURE

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

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

15A NCAC 18A .0180 SAMPLING AND TESTING

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

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

15A NCAC 18A .0188 HAZARD ANALYSIS

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

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

15A NCAC 18A .0189 HACCP PLAN

Each dealer shall have and implement a written ~~HACCP~~ Hazard Analysis and Critical Control Points (HACCP) Plan. The owner or authorized designee shall sign the plan when implemented and after any modification. 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.

- (4) ~~the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN of water shall not exceed 14 per 100 milliliters, and not more than 10 percent of the samples shall exceed a fecal coliform MPN of 43 per 100 milliliters (per five tube decimal dilution) in those portions of areas most probably exposed to fecal contamination during most unfavorable hydrographic conditions.~~

Authority G.S. 130A-230.

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

15A NCAC 18A .0704 LABORATORY PROCEDURES

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

(b) ~~The laboratory shall conduct routine bacterial examinations of process water and shellfish, and special examinations when necessary or required in accordance with Rule .0706 of this Subchapter.~~

(c) ~~(b) Bacterial examinations of shellfish and sea water shall be made in accordance with "Recommended Procedures for Examination of Sea Water and Shellfish", American Public Health Association, Inc., which is adopted by reference in accordance with G.S. 150B-14(e), or other methods approved by the Division. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Marine Fisheries Building, Arendell Street, Morehead City, North Carolina 28557. All methods for the analysis of depuration process water and shellfish that are used to evaluate the effectiveness of the depuration process shall be cited in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests or validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference. If there is an immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following may be used:~~

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

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

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

15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS

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

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

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

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

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

~~In order that an area be approved for shellfish harvesting for direct market purposes the following criteria must be satisfied as indicated by sanitary survey:~~

- (1) ~~the shoreline survey has indicated that there is no significant point source contamination;~~
- (2) ~~the area is not so contaminated with fecal material that consumption of the shellfish might be hazardous;~~
- (3) ~~the area is not so contaminated with radionuclides or industrial wastes that consumption of the shellfish might be hazardous; and~~

~~(d) All other physical, chemical, or biological tests shall be conducted according to "Standard Methods for the Examination of Water and Waste Water", prepared and published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation, which is adopted by reference in accordance with G.S. 150B-14(c), or other methods approved by the Division. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.~~

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

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0901 DEFINITIONS

The following definitions shall apply throughout this Section.

- (1) ~~"Approved area"~~ "Approved" means ~~an area shellfish growing waters~~ determined suitable 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.
- ~~(3)(4)~~ "Commercial marina" means ~~marinas~~ a marina that ~~offer~~ offers one or more of the following services: fuel, transient dockage, haul-out facilities, or repair services.
- ~~(4)(5)~~ "Conditionally ~~approved area~~" approved means ~~an area 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.
- (5) ~~"Depuration" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled method.~~
- (6) "Division" means the Division of ~~Environmental Health~~ 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.

- ~~(7)(8)~~ "Fecal coliform" means bacteria of the coliform group ~~which 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.
- (8) ~~"Growing waters" means waters which support or could support shellfish life.~~
- ~~(9)(10)~~ "Marina" means any water area with a structure (dock, basin, floating dock, etc.) ~~which that~~ is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than 10 boats.
- ~~(10)(11)~~ ~~"Marine biotoxins" means a poisonous substance accumulated by shellfish feeding upon dinoflagellates containing toxins. 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.
- ~~(14)(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.
- ~~(12)(15)~~ "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- ~~(13)(16)~~ "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- ~~(14)(17)~~ ~~"Prohibited area"~~ "Prohibited" means an area shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- ~~(15)(18)~~ "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- (16) ~~"Relaying" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.~~
- ~~(17)(19)~~ ~~"Restricted area"~~ "Restricted" means an area shellfish growing waters from which shellfish may be harvested only by permit and are subjected to ~~an approved depuration process or~~

~~relayed to an approved area.~~ a suitable and effective treatment process through relaying or depuration.

- ~~(18)~~(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.
- ~~(19)~~(21) "Shellfish" means ~~oysters, mussels, scallops and all varieties of clams. However~~ "shellfish" as defined in G.S. 113-229, 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.
- ~~(20)~~(25) "Shoreline survey" means a visual inspection of the environmental factors that affect the sanitary quality of a growing area and identifies sources of pollution when possible. an in-field inspection 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. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

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

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

- (1) ~~Approved area;~~ approved;
- (2) ~~Conditionally approved area;~~ conditionally approved;
- (3) ~~Restricted area;~~ restricted; or
- (4) ~~Prohibited area;~~ prohibited.

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

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

15A NCAC 18A .0903 SANITARY SURVEY

(a) ~~Growing Shellfish growing~~ waters shall be divided into growing areas by the ~~Division.~~ Division of Marine Fisheries. Maps showing the boundaries of these shellfish growing areas shall be maintained by the Division and can be found at: <http://portal.ncdenr.org/web/mf/shellfish-closure-maps>.

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

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

- (1) ~~A shoreline survey. survey to evaluate pollution sources that may affect the area.~~
- (2) ~~A hydrographic survey to evaluate meteorological and hydrographic~~ an evaluation of meteorological, hydrodynamic, and geographic factors that may affect distribution of pollutants.
- (3) ~~a bacteriological microbiological survey to assess water quality. A bacteriological microbiological survey shall include the collection of growing area water samples and their analysis for fecal coliforms. The number and location of sampling stations shall be selected to produce the data necessary to effectively evaluate all point and non-point pollution sources. sources identified during the shoreline survey. A minimum of 45 six samples shall be collected annually from each designated sampling station. sets of samples shall be collected from growing areas during the three year evaluation period. Areas without a shoreline may be sampled less frequently.~~
- (4) a determination of the appropriate classification for all shellfish growing waters within the shellfish growing area in accordance with Rule .0902 of this Section.

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

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

All other reclassifications may be made without a sanitary survey.

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

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

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

~~(e) Sanitary survey reports shall be prepared every three years.~~
~~(d)(f) All sanitary Sanitary survey reports and annual evaluation reports shall be maintained by the Division.~~

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

15A NCAC 18A .0904 APPROVED AREAS WATERS

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

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

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

15A NCAC 18A .0905 CONDITIONALLY APPROVED AREAS WATERS

(a) An area Shellfish growing waters may be classified as conditionally approved if the Division of Marine Fisheries determines the following:

- (1) the sanitary survey indicates the area shellfish growing waters will not meet the approved area waters classification criteria as set forth in Rule .0904 of this Section under all conditions, for a reasonable period of time and the factors determining these periods are known and predictable; but will meet those criteria under certain conditions;
- (2) the conditions when the shellfish growing waters will meet the approved waters classification criteria are known and predictable;
- (3) the public bottom within those shellfish growing waters support a population of harvestable shellfish; and
- (4) staff are available to carry out the requirements defined in the management plan, as set forth in Paragraph (b) of this Rule.

(b) A written management plan shall be developed by the Division for conditionally approved areas. This plan shall define the conditions under which the shellfish growing waters may be open to the harvest of shellfish. If the conditions defined in the management plan are not met, the Division shall immediately close the shellfish growing waters to shellfish harvesting.

(c) When management plan criteria are met the Division may recommend to the Division of Marine Fisheries the area may be opened to shellfish harvesting on a temporary basis.

(d) When management plan criteria are no longer met or public health appears to be jeopardized, the Division will recommend to the Division of Marine Fisheries immediate closure of the area to shellfish harvesting.

(e) All conditionally approved growing waters shall be re-evaluated on an annual basis. A written report summarizing this re-evaluation shall be produced and shall include the following:

- (1) an evaluation of compliance with management plan criteria;
- (2) a review of the cooperation of all persons involved;
- (3) an evaluation of bacteriological water quality in the growing waters with respect to the standards for the classification; and
- (4) an evaluation of critical pollution sources.

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

15A NCAC 18A .0906 RESTRICTED AREAS

(a) An area Shellfish growing waters may be classified as restricted restricted if: when a sanitary survey indicates a limited degree of pollution and the area is not contaminated to the extent that indicates that consumption of shellfish could be hazardous after controlled depuration or relaying.

- (1) a sanitary survey indicates there are no significant point sources of pollution.

- (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, 18A .0300, Rules Governing the Sanitation of Shellfish.

(c) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A, 18A .0300 and .0700, Rules Governing the Sanitation of Shellfish.

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

- (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. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0907 PROHIBITED AREAS WATERS

~~A growing area shall be classified prohibited if there is no current sanitary survey or if the sanitary survey or other monitoring program data indicate that the area does not meet the criteria as specified in approved, conditionally approved or restricted classifications. The taking of shellfish for any human food purposes from such areas shall be prohibited.~~
Shellfish growing waters shall be classified as prohibited if:

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

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

15A NCAC 18A .0908 UNSURVEYED AREAS

~~Growing areas which have not been subjected to a sanitary survey shall be classified as prohibited.~~

Authority G.S. 130A-230.

15A NCAC 18A .0909 BUFFER ZONE ZONES

~~A prohibited area shall be established as a buffer zone around each wastewater treatment plant outfall.~~

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

- (1) marinas, in accordance with Rule .0911 of this Section.
- (2) wastewater treatment plant outfalls or other point source outfalls determined to be of public health significance, in accordance with the latest approved edition of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance, Chapter IV: Shellstock Growing Areas.

(b) Buffer zones shall be classified as prohibited.

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

15A NCAC 18A .0910 RECLASSIFICATION

~~(a) Any upward revision of an area classification shall be supported by a sanitary survey and documented in the sanitary survey report.~~

~~(b) A downward revision of an area classification may be made without a sanitary survey.~~

~~(c) When growing waters are reclassified, appropriate recommendations shall be made to the Division of Marine Fisheries regarding the opening and closure of the waters for the harvest of shellfish for human consumption.~~

Authority G.S. 130A-230.

15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY

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

~~(b) The Division shall recommend to the Division of Marine Fisheries re-opening may re-open shellfish growing waters when if the condition causing the public health emergency no longer exists and shellfish have had sufficient time to purify naturally from possible contamination.~~

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

15A NCAC 18A .0914 LABORATORY PROCEDURES

~~All laboratory examinations for water and shellfish used for the evaluation of growing areas shall be made in accordance with the~~

latest approved edition by the Food and Drug Administration of "Recommended Procedures for Examination of Sea Water and Shellfish", American Public Health Association, Inc., which is adopted by reference in accordance with G.S. 150B-14(e). A copy of this publication is available for inspection at the Shellfish Sanitation Office, Marine Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.

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

(b) All methods for the analysis of shellfish and shellfish growing waters that are used for the evaluation of shellfish growing areas shall be cited in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests or validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference. If there is an immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following may be used:

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

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

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Wildlife Resources Commission intends to readopt with substantive changes the rules cited as 15A NCAC 10B .0409; and 10H .1201-.1207.

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncwildlife.org/Proposed-Regulations

Proposed Effective Date: February 1, 2021

Public Hearing:

Date: October 29, 2020

Time: 6:00 pm

Location: Please follow this link to register for the webinar: https://ncwildlife.zoom.us/webinar/register/WN_v9T879ApQzKDtMp2wm7XKw or join by telephone: 877 853 5247 (Toll Free) or 888 788 0099 (Toll Free) Webinar ID: 970 1200 3770

Reason for Proposed Action: The rules in 15A NCAC 10H .1200 were part of the agency's 2016 periodic review of rules package. All rules in this Section were determined to be necessary with substantive public interest and require reoption. Because

these rules have only been amended once since 1990, revisions were necessary to update language, clarify requirements and improve regulatory oversight.

Because of the proposed changes to the 10H .1200 rules, 15A NCAC 10B .0409 needed to be updated to align the requirements for trappers to those for fox preserve owners.

Comments may be submitted to: Rule-making Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org

Comment period ends: November 30, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0400 - TAGGING FURS

15A NCAC 10B .0409 SALE OF LIVE FOXES AND COYOTES TO CONTROLLED FOX HUNTING PRESERVES

(a) In counties with a trapping season for foxes and coyotes that do not prohibit live sale, Licensed licensed trappers may, subject to the restrictions on taking foxes in G.S. 113-291.4, live-trap foxes and coyotes during any open trapping that season for foxes and coyotes, and sell them to licensed controlled fox hunting preserves in accordance with the following conditions: conditions set forth in this Rule.

(b) Licensed trappers are exempt from eaging, captivity permit or and captivity license requirements set forth in 15A NCAC 10H .0300 for any live-trapped foxes or coyotes trapped for the purpose of sale to controlled fox hunting preserves. This

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

November 2020

Time of Year	Action
November 2020	MFC votes on preferred management options
Nov. 2020-Jan. 2021	DMF staff drafts proposed rule options
February 2021	MFC votes on preferred option for proposed rules
February-April 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 2021	MFC approves Notice of Text for Rulemaking
August 2021	Publication of proposed rules in the <i>North Carolina Register</i>
August-October 2021	Public comment period held
September 2021	Public hearing(s) held (details to be determined)
November 2021	MFC considers approval of permanent rules *
January 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2022 <i>or</i> TBD	Proposed effective date of rules unless rules are subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
April 1, 2022	Rulebook supplement available online
April 15, 2022	Commercial license sales begin

* 15A NCAC 03 readoption deadline of June 30, 2022 for final MFC approval

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

November 2020

Time of Year	Action
November 2020	MFC votes on preferred management options
Nov. 2020-Jan. 2021	DMF staff drafts proposed rule options
February 2021	MFC votes on preferred option for proposed rules
February-July 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2021	MFC approves Notice of Text for Rulemaking
October 2021	Publication of proposed rules in the <i>North Carolina Register</i>
Oct.-Nov. 2021	Public comment period held
October 2021	Public hearing(s) held (details to be determined)
February 2022	MFC considers approval of permanent rules *
April 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 15, 2022	Commercial license sales begin
May 1, 2022 <i>or</i> TBD	Proposed effective date of rules unless rules are subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2022	Rulebook supplement available online

* 15A NCAC 03 readoption deadline of June 30, 2022 for final MFC approval