

Documents

Rule Suspensions

Rulemaking Update Memo

2023-2024 Annual Rulemaking Cycle

2024-2025 Annual Rulemaking Cycle

2024-2025 Proposed Rules Public
Comment Period News Release

North Carolina Register Excerpt



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

November 6, 2024

MEMORANDUM

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

Issue

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

Findings

There have been no new rule suspensions since the August 2024 meeting.

Action Needed

No action is needed.

Overview

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

NCMFC Rule 15A NCAC 03J .0103 (h) GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to implement year-round small mesh gill net attendance requirements in certain areas of the Tar-Pamlico and Neuse rivers systems. This action was taken as part of a department initiative to review existing small mesh gill net rules to limit yardage and address attendance requirements in certain areas of the state. This suspension continues in Proclamation [M-21-2024](#).

NCMFC Rule 15A NCAC 03J .0501 (e)(2) DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to increase the minimum mesh size of escape panels for flounder pound nets



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in accordance with Amendment 3 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in proclamation [M-34-2015](#) and continues in Proclamation [M-9-2024](#).

NCMFC Rule 15A NCAC 03L .0103 (a)(1) PROHIBITED NETS, MESH LENGTHS AND AREAS

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to adjust trawl net minimum mesh size requirements in accordance with Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in Proclamation SH-3-2019 and continues in Proclamation [SH-1-2022](#).

NCMFC Rule 15A NCAC 03L .0105 (2) RECREATIONAL SHRIMP LIMITS

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

NCMFC Rule 15A NCAC 03L .0205 (a) CRAB SPAWNING SANCTUARIES

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to close crab spawning sanctuaries year-round to the use of trawls in accordance with Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in Proclamation [M-13-2024](#).

NCMFC Rule 15A NCAC 03M .0502 (a) MULLET

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to modify the recreational and for-hire possession limits of mullet in accordance with Amendment 2 to the North Carolina Striped Mullet Fishery Management Plan. This suspension was implemented in Proclamation [FF-27-2024](#).

NCMFC Rule 15A NCAC 03M .0515 (a)(2) DOLPHIN

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to adjust the recreational vessel limit to complement management of dolphin under the South Atlantic Fishery Management Council's Amendment 10 to the Fishery



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Management Plan for the Dolphin and Wahoo Fishery of the Atlantic. This suspension was implemented in Proclamation [FF-30-2022](#).

NCMFC Rule 15A NCAC 03O .0501 (e)(4) PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to issue the Shellfish Relocation Permit to permittees already issued a Division of Coastal Management permit for development activity. This suspension was implemented in Proclamation [M-11-2023](#).

NCMFC Rule 15A NCAC 03Q .0107 (4) SPECIAL REGULATIONS: JOINT WATERS

Suspension of a portion of this rule for an indefinite period. Suspension of this rule allows the division to adjust the creel limit for American shad under the management framework of the North Carolina American Shad Sustainable Fishery Plan. This suspension was continued in Proclamation [FF-6-2024](#).



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MARY PENNY KELLEY
Secretary

KATHY B. RAWLS
Director

October 25, 2024

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the 2023-2024 and 2024-2025 rulemaking cycles. No rulemaking action is required at the November 2024 MFC business meeting.

Findings

- 2023-2024 Rulemaking Cycle – Update
 - At its May 2023 business meeting, the MFC began the process for 103 rules in this cycle.
 - On April 1, 2024, 80 of these rules became effective; three additional rules became effective June 17, 2024, following legislative review.
 - At its May 2024 business meeting, the MFC gave final approval of the remaining 20 rules. The rules received final approval at the July 31 Rules Review Commission (RRC) meeting.
 - Two of these rules became effective August 1, 2024. The remaining 18 rules are automatically subject to legislative review during the 2025 long session and thus, will have a delayed effective date.
- 2024-2025 Rulemaking Cycle – Update
 - At its August 2024 business meeting, the MFC began the process for eight rules in this cycle.
 - On October 1, 2024, a news release was issued and the proposed rules were published in the *N.C. Register*, beginning the public comment process.
 - There will be a public hearing held on October 30, 2024, at 6 p.m. and the public comment period will close at 5 p.m. December 2, 2024.
 - The public comments will be presented to the MFC at its February 2025 business meeting when it is scheduled to vote on final approval of the rules. The rules have an earliest effective date of May 1, 2025.

Action Needed

No rulemaking action is required at the November 2024 MFC business meeting.

2023-2024 Rulemaking Cycle Update (18 of 103 rules remaining)

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

The MFC accepted public comments on the proposed rules from August 1 through 5 p.m. October 2, 2023. A public hearing was held via WebEx with a listening station at the Division of Marine Fisheries (DMF) Central District Office in Morehead City on August 16 at 6 p.m. The MFC received the public comments at its November 2023 business meeting and gave final approval of 83 of the 103 rules that are related to shellfish plants and inspections, to meet readoption deadlines. There are 80 rules that became effective on April 1, 2024. Three rules were automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 and became effective June 17, 2024. These 83 rules are available in the [latest supplement](#) to the April 1, 2020 North Carolina Marine Fisheries Commission Rules (see <https://www.deq.nc.gov/about/divisions/marine-fisheries/rules-proclamations-and-size-and-bag-limits/rules>).

At its May 2024 business meeting, the MFC was again provided a copy of the public comments received for this rulemaking cycle and then gave final approval of the remaining 20 rules. A summary of these proposed rules by subject is provided below. The rules received final approval at the July 31 Rules Review Commission (RRC) meeting. Two rules became effective August 1, 2024 (15A NCAC 03K .0110, 03R .0117) and are available in the [latest supplement](#) to the April 1, 2020 North Carolina Marine Fisheries Commission Rules. The remaining 18 rules are automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 during the 2025 long session and thus, will have a delayed effective date.

READOPTON OF SHELLFISH PLANT AND INSPECTION RULES IN 15A NCAC 18A .0300 THROUGH .0800 (1 of 85 rules remaining)

Pursuant to N.C.G.S. § 150B-21.3A, this package of 85 rules for shellfish plants and inspections in 15A NCAC 03K and 18A consisted of the readoption of one rule with no changes, readoption of 55 rules with amendments, repeal through readoption of 23 rules, amendment of two rules, adoption of three rules, and the repeal of one rule. The changes help ensure that North Carolina remains in full compliance with national requirements, provide efficiencies for the DMF in the process of implementing and enforcing the rules, and clarify and update the rules for stakeholders. The one remaining rule (15A NCAC 18A .0302) contains minor conforming amendments.

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

Due to the increasing occurrence and severity of harassment during, and decreasing participation in, DMF data collection initiatives, amendments are proposed to five MFC rules. Proposed amendments set requirements to address harassment of DMF employees by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) that

occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments provide the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees.

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

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program ended May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting. DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for the relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the Administrative Procedure Act (N.C.G.S. § 150B).

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

2024-2025 Rulemaking Cycle (8 rules)

At its August 2024 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for eight rules. A summary of the proposed rules by subject is provided below. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. On October 1, 2024, a news release was issued and the proposed rules were published in the *N.C. Register*, beginning the public comment process. These documents are provided in the rulemaking section of the briefing materials.

There will be a public hearing held on October 30, 2024, at 6 p.m. via WebEx with a listening station at the DMF's Central District Office in Morehead City. The public comment period will close at 5 p.m. December 2, 2024. The public comments will be presented to the MFC at its February 2025 business meeting when it is scheduled to vote on final approval of the rules. Proposed rules have an earliest effective date of May 1, 2025, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would likely be available for review during the 2026 short session and thus, would have a delayed effective date.

POT MARKING REQUIREMENTS RULE AMENDMENTS (1 rule)

Proposed amendments would simplify pot marking requirements for commercial fishermen by requiring only one of three ways to mark pot buoys, not two ways: 1) gear owner's current motorboat registration number; or 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. The current rule requires the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. There have been no problems with pot identification and pot identification would be sufficient via a single identifier. The proposed amendments would simplify the requirements and grant some relief to commercial fishermen that use pots in their commercial fishing operation.

FALSE ALBACORE MANAGEMENT RULE ADOPTION (1 rule)

The proposed adoption of this rule would provide a mechanism to implement management measures to cap harvest when the false albacore fishery landings exceed a threshold of 200% of average landings from both sectors combined from 2018 to 2022. Harvest restrictions would be implemented if the threshold is exceeded as a means to prevent further expansion of the false albacore fisheries beyond the threshold. Currently, there are no rules in place for management of false albacore in North Carolina.

There is no baseline stock assessment for false albacore and thus, no biological basis for reducing harvest. The only mechanism to monitor false albacore is through annual landings in North Carolina, which is not a measure for sustainability of the stock. While there is no need to manage to meet sustainability requirements, the MFC is seeking proactive management of false albacore to limit expansion of new and existing fisheries. Management options would include commercial trip limits, recreational bag limits, and recreational vessel limits.

INTERSTATE WILDLIFE VIOLATOR COMPACT RULE ADOPTIONS (6 rules)

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

N.C. Marine Fisheries Commission

2023-2024 Annual Rulemaking Cycle

November 2024

Time of Year	Action
February-April 2023	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 26, 2023	MFC approved Notice of Text for Rulemaking
Aug. 1, 2023	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 1-Oct. 2, 2023	Public comment period held
Aug. 16, 2023	Public hearing held via WebEx with listening station
Nov. 17, 2023	MFC receives public comments and approves 83 of 103 permanent rules
Jan. 31, 2024	83 rules approved by Office of Administrative Hearings/ Rules Review Commission
April 1, 2024	Effective date of 80 rules not subject to legislative review
April 1, 2024	Rulebook supplement available online
May 24, 2024	MFC receives reminder of public comments and approves remaining 20 of 103 permanent rules
June 17, 2024	Effective date of 3 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1
June 17, 2024	Rulebook supplement available online
July 31, 2024	20 rules approved by Office of Administrative Hearings/ Rules Review Commission
August 1, 2024	Effective date of 2 rules not subject to legislative review
August 1, 2024	Rulebook supplement available online
2025 legislative session	Possible effective date of 18 rules subject to legislative review per S.L. 2019-37, and S.L. 2019-198 and G.S. 14-4.1

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

November 2024

Time of Year	Action
February-July 2024	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 23, 2024	MFC approved Notice of Text for Rulemaking
Oct. 1, 2024	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Dec. 2, 2024	Public comment period held
Oct. 30, 2024, 6 p.m.	Public hearing held via WebEx with listening station
February 2025	MFC receives public comments and votes on final approval of permanent rules
April 2025	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2025	Earliest effective date of rules not subject to legislative review
May 1, 2025	Rulebook supplement available online
2026 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1



ROY COOPER
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MARY PENNY KELLEY
Secretary
KATHY B. RAWLS
Division Director



Oct. 1, 2024

Comment period opens, public hearing scheduled for eight marine fisheries rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on eight proposed rules pertaining to the Interstate Wildlife Violator Compact, false albacore management and pot marking requirements.

A public hearing will be held by web conference on Oct. 30 at 6 p.m. A listening station will be established at the NCDEQ Division of Marine Fisheries Central District Office at 5285 Highway 70 West, Morehead City.

The public may join the meeting online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing. Those who wish to speak at the listening station may sign up when they arrive.

WHO: Marine Fisheries Commission
WHAT: Public Hearing for Proposed Rules
WHEN: Oct. 30 at 6 p.m.
WHERE: Meeting by Web Conference
[Click Here](#) for Information and to Sign Up to Speak

Members of the public may also submit written comments through an online form or through the mail to:

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

Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Dec. 2, 2024.

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 [2024-2025 Proposed Rules Page](#).

Interstate Wildlife Violator Compact – Proposed adoption of 15A NCAC 03O .0601-.0606 would comply with the requirements of the Interstate Wildlife Violator Compact Act ("Act"). In its definition of "wildlife," the Act includes all species of animals the N.C. Marine Fisheries Commission and the Division of Marine Fisheries protect and regulate. The Act provides reciprocal recognition of license suspensions with participating states

and enhanced flexibility for fair and impartial treatment of non-residents with wildlife resources violations, including fishing violations. The adoption of these rules would allow the Division of Marine Fisheries to hold wildlife violators accountable and treat them the same, regardless of their state residency.

False Albacore Management – The proposed adoption of 15A NCAC 03M .0523 would delegate authority to the Fisheries Director to issue a public notice, called a "proclamation," to manage the false albacore fishery if landings exceed a predetermined threshold, with prior consent by the N.C. Marine Fisheries Commission. False albacore (*Euthynnus alletteratus*), also known as "little tunny," is not managed at the state or federal level in North Carolina or in any Atlantic waters on the East Coast. North Carolina currently has no procedural means to manage this fishery. The N.C. Marine Fisheries Commission is seeking to establish procedures in case the fishery continues to expand. The proposed rule adoption would be the first regulation for the false albacore fishery implemented in Atlantic waters.

Pot Marking Requirements – Proposed amendments to 15A NCAC 03J .0301 would reduce the burden on stakeholders who use pots for fishing by only requiring one form of pot identification, instead of two forms, as is currently required. The agency coordinated with N.C. Marine Patrol to conclude that one form of identification is sufficient for marking pots. The proposed changes are in response to feedback from stakeholders and internal review of processes.

The public comments and proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval of the rules in February 2025. The proposed rules have an earliest effective date of May 1, 2025.

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

For More Information

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

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NORTH CAROLINA REGISTER

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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.

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NORTH CAROLINA REGISTER
Publication Schedule for January 2024 – December 2024

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
38:13	01/02/24	12/06/23	01/17/24	03/04/24	03/20/24	04/30/2024	05/01/24	09/28/24
38:14	01/16/24	12/19/23	01/31/24	03/18/24	03/20/24	04/30/2024	05/01/24	10/12/24
38:15	02/01/24	01/10/24	02/16/24	04/01/24	04/20/24	05/29/2024	06/01/24	10/28/24
38:16	02/15/24	01/25/24	03/01/24	04/15/24	04/20/24	05/29/2024	06/01/24	11/11/24
38:17	03/01/24	02/09/24	03/16/24	04/30/24	05/20/24	06/26/2024	07/01/24	11/26/24
38:18	03/15/24	02/23/24	03/30/24	05/14/24	05/20/24	06/26/2024	07/01/24	12/10/24
38:19	04/01/24	03/08/24	04/16/24	05/31/24	06/20/24	07/31/2024	08/01/24	12/27/24
38:20	04/15/24	03/22/24	04/30/24	06/14/24	06/20/24	07/31/2024	08/01/24	01/10/25
38:21	05/01/24	04/10/24	05/16/24	07/01/24	07/20/24	08/28/2024	09/01/24	01/26/25
38:22	05/15/24	04/24/24	05/30/24	07/15/24	07/20/24	08/28/2024	09/01/24	02/09/25
38:23	06/03/24	05/10/24	06/18/24	08/02/24	08/20/24	09/25/2024	10/01/24	02/28/25
38:24	06/17/24	05/24/24	07/02/24	08/16/24	08/20/24	09/25/2024	10/01/24	03/14/25
39:01	07/01/24	06/10/24	07/16/24	08/30/24	09/20/24	10/30/2024	11/01/24	03/28/25
39:02	07/15/24	06/21/24	07/30/24	09/13/24	09/20/24	10/30/2024	11/01/24	04/11/25
39:03	08/01/24	07/11/24	08/16/24	09/30/24	10/20/24	11/26/2024	12/01/24	04/28/25
39:04	08/15/24	07/25/24	08/30/24	10/14/24	10/20/24	11/26/2024	12/01/24	05/12/25
39:05	09/03/24	08/12/24	09/18/24	11/04/24	11/20/24	12/19/2024	01/01/25	05/31/25
39:06	09/16/24	08/23/24	10/01/24	11/15/24	11/20/24	12/19/2024	01/01/25	06/13/25
39:07	10/01/24	09/10/24	10/16/24	12/02/24	12/20/24	*01/29/2025	02/01/25	06/28/25
39:08	10/15/24	09/24/24	10/30/24	12/16/24	12/20/24	*01/29/2025	02/01/25	07/12/25
39:09	11/01/24	10/11/24	11/16/24	12/31/24	01/20/25	*02/26/2025	03/01/25	07/29/25
39:10	11/15/24	10/24/24	11/30/24	01/14/25	01/20/25	*02/26/2025	03/01/25	08/12/25
39:11	12/02/24	11/06/24	12/17/24	01/31/25	02/20/25	*03/26/2025	04/01/25	08/29/25
39:12	12/16/24	11/21/24	12/31/24	02/14/25	02/20/25	*03/26/2025	04/01/25	09/12/25

*Dates not approved by the RRC

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 Human Resources 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 but not later than 60 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.

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

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

TITLE 15A — DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03M .0523; 03O .0601-.0606 and amend the rule cited as 15A NCAC 03J .0301.

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

Proposed Effective Date:
 15A NCAC 03J .0301 — Subject to Legislative Review
 15A NCAC 03M .0523; 03O .0601-.0606 — May 1, 2025

Public Hearing:
Date: October 30, 2024
Time: 6:00 p.m.
Location:
 WebEx Events meeting link:
<https://ncgov.webex.com/ncgov/j.php?MTID=m104177ff009f62977013418ccb145fa9>
 Event number: 2425 240 2363
 Event password: 1234
 Event phone number: 1-415-655-0003
 Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:

Pot Marking Requirements
15A NCAC 03J .0301 POTS
In accordance with N.C.G.S. § 150B-19.1(a)(2), the proposed rule amendments seek to reduce the burden on stakeholders who use pots for fishing by only requiring one form of pot identification, not two forms. The agency coordinated with N.C. Marine Patrol to conclude that one form of identification is sufficient for marking pots. The proposed changes are in response to feedback from stakeholders and internal review of processes.

False Albacore Management
15A NCAC 03M .0523 FALSE ALBACORE
*The proposed rule adoption would delegate proclamation authority to the Fisheries Director to issue a proclamation to manage the false albacore fishery if landings exceed a predetermined threshold, with prior consent by the Marine Fisheries Commission (MFC). False albacore (*Euthynnus alletteratus*), also known as "little tunny", is not managed at the state nor federal level in North Carolina nor in any Atlantic waters on the east coast of the United States. North Carolina does not currently have any means to manage this fishery and the MFC is seeking the ability to do so to be prepared if the fishery*

continues to expand. The need for potential management was identified when there was concern expressed by the recreational fishing industry and the MFC that commercial and recreational landings have increased annually over the last 10 years and that the pressure could continue to increase over time with no tool available to implement management. The proposed rule adoption would be the first regulation for the false albacore fishery implemented in Atlantic waters.

Interstate Wildlife Violator Compact
15A NCAC 03O .0601 WVC GENERAL PROVISIONS
15A NCAC 03O .0602 WVC OPERATIONS MANUAL
15A NCAC 03O .0603 WVC CONDITIONS FOR N.C. VIOLATIONS BY NON-RESIDENTS
15A NCAC 03O .0604 WVC CONDITIONS FOR N.C. RESIDENTS FOR FAILURE TO APPEAR OR FAILURE TO COMPLY IN ANOTHER WVC MEMBER STATE
15A NCAC 03O .0605 WVC RECIPROCAL RECOGNITION OF SUSPENSIONS
15A NCAC 03O .0606 APPEALS

The proposed adoption of these six rules would comply with the Wildlife Violator Compact Act (WVC). The N.C. General Assembly enacted the WVC in statute (Article 22B) via Senate Bill 175 in 2008. The bill was signed into law on July 14, 2008, and became effective on October 1, 2008. In 2009, House Bill 105 added the N.C. Marine Fisheries Commission (MFC) and the N.C. Division of Marine Fisheries (DMF) to the WVC and all species of animals they protect or regulate to the definition of "wildlife". This act became effective on October 1, 2009. Article 22B includes G.S. § 113-300.7, which requires the N.C. Wildlife Resources Commission (WRC) and the MFC to adopt rules necessary to carry out the purpose of Article 22B. The legislation requires the WRC to adopt its rules first, which it did, effective August 1, 2017. The WVC would have two primary benefits pertaining to the wildlife resources under the authority of the MFC and the DMF: 1) reciprocal recognition of license suspensions with WVC participating states; and 2) enhanced flexibility for fair and impartial treatment of non-resident violators. North Carolina's participation in the WVC gives N.C. agencies a mechanism to increase accountability on wildlife violators who have been suspended in other jurisdictions. The adoption of MFC rules would allow DMF to hold those wildlife violators accountable and would result in the N.C. Marine Patrol being able to treat all wildlife violators equally, regardless of their state residency. By providing a mechanism to suspend licenses in outside jurisdictions there is a consequence for those charged should they fail to appear in court or fail to comply, thus serving as a deterrent for wildlife violators from outside jurisdictions.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557 (Written comments may also be

submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>.)

Comment period ends: December 2, 2024

Rule is automatically subject to legislative review: S.L. 2019-198: 15A NCAC 03J .0301

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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 03J — NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0300 — POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

(a) It shall be unlawful to use pots except during time periods and in areas specified herein:

- (1) in Internal Waters from December 1 through May 31, except that:
(A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 1 through January 31. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from this removal requirement.
(B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed from Internal Waters from March 1 through March 15.

- (2) in Internal Waters from June 1 through November 30 in the Northern Region designated in 15A NCAC 03R .0118(1):
(A) in areas described in 15A NCAC 03R .0107(a).
(B) to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for and designate the areas described in 15A NCAC 03R .0107(b) or any part thereof, for the use of pots.
(3) in Internal Waters from May 1 through November 30 in the Southern Region designated in 15A NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.
(4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

(b) It shall be unlawful to use pots:

- (1) in any navigation channel marked by State or Federal agencies; or
(2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It shall be unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials One of the following shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following: buoy:

- (1) gear owner's current motor boat registration number; or
(2) gear owner's U.S. vessel documentation name; or
(3) gear owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

(f) It shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half inch.

(g) Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than three unobstructed escape rings that are at least two and five-sixteenth inches inside diameter and:

- (1) for pots with a divider:
(A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and

- (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.
- (2) for pots without a divider:
 - (A) two escape rings shall be located on opposite panels of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.

For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

(h) The Fisheries Director may, by proclamation, impose on a commercial fishing operation and for recreational purposes any of the following restrictions for pots:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify record keeping and reporting requirements;
- (5) specify season, including a closed season for removal of all pots from Internal Waters;
- (6) specify species; and
- (7) specify quantity.

(i) It shall be unlawful to use more than 150 crab pots per vessel in Newport River.

(j) It shall be unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(k) It shall be unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

(l) It shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" shall mean any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03M — FINFISH

SECTION .0500 — OTHER FINFISH

15A NCAC 03M .0523 FALSE ALBACORE

(a) If the level of landings of false albacore in a calendar year exceeds 200 percent of the five-year average of North Carolina recreational and commercial landings combined from 2018-2022, the Fisheries Director shall issue a proclamation as set forth in Paragraph (b) of this Rule.

(b) In accordance with Paragraph (a) of this Rule and after prior consent of the Marine Fisheries Commission, the Fisheries Director shall, by proclamation, impose the following requirements on the taking of false albacore:

- (1) for recreational purposes, specify a bag limit not to exceed 10 fish per person per day, not to exceed 30 fish per vessel per day; and

- (2) for a commercial fishing operation, specify a trip limit not to exceed 3,500 pounds in any one day or trip, whichever is more restrictive.

(c) A proclamation issued in accordance with Paragraphs (a) and (b) of this Rule shall become effective January 1 of the year following the year when the determination is made that a proclamation shall be issued. The proclamation shall expire when the level of landings falls below the landings level in Paragraph (a) of this Rule in a subsequent calendar year and after prior consent of the Marine Fisheries Commission.

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

SUBCHAPTER 03O — LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0600 — INTERSTATE WILDLIFE VIOLATOR COMPACT (WVC)

15A NCAC 03O .0601 WVC GENERAL PROVISIONS

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

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

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

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

Authority G.S. 113-134; 113-300.7.

15A NCAC 03O .0602 WVC OPERATIONS MANUAL

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

Authority G.S. 113-134; 113-300.7.

15A NCAC 03O .0603 WVC CONDITIONS FOR NORTH CAROLINA VIOLATIONS BY NON-RESIDENTS

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

(b) Non-residents of North Carolina who are residents of a WVC member state at the time of a misdemeanor violation as set forth in Paragraph (a) of this Rule occurring in North Carolina may be

released on personal recognizance when the violation consists of a written citation requiring a violator to resolve the violation directly with the court, either in person, by mail, or through an attorney.

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

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

Authority G.S. 113-134; 113-300.7.

15A NCAC 030 .0604 WVC CONDITIONS FOR NORTH CAROLINA RESIDENTS FOR FAILURE TO APPEAR OR FAILURE TO COMPLY IN ANOTHER WVC MEMBER STATE

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

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

- (1) the suspension shall have a delayed effective date of at least 14 business days from the date of the mail used to send the notice of suspension to the wildlife violator, to allow the wildlife violator to contact the court in the issuing state and resolve the citation;
- (2) the notice shall be a letter sent by the U.S. Postal Service to the last known address of the wildlife violator or be delivered personally;
- (3) the notice of suspension shall inform the violator of the issuing state from which the wildlife violator is suspended, the details of the violation provided by that issuing state to the Division, and procedures to be followed in resolving the matter with the court in the issuing state; and
- (4) the notice shall provide the procedure for appealing the suspension.

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

(d) When a North Carolina resident resolves a violation with the court in the issuing state, it is the responsibility of the resident to notify the Division and present documentation of compliance by submitting a copy of either the court judgment resolving the

matter or a Notice of Compliance from the issuing state. Upon receipt of the required documentation, the Division shall issue an acknowledgement of compliance to the resident. If the acknowledgement is issued before the effective date of the suspension, the suspension shall be rescinded. If the acknowledgment of compliance is issued after the effective date of the suspension, the Division shall return any licenses or permits.

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

Authority G.S. 113-134; 113-300.7; 143B-289.52.

15A NCAC 030 .0605 WVC RECIPROCAL RECOGNITION OF SUSPENSIONS

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

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

- (1) name;
- (2) date of birth;
- (3) last known address;
- (4) violations and convictions upon which the suspension is based;
- (5) scope of the suspension (e.g., fishing, hunting, trapping, all privileges or rights); and
- (6) effective dates of the suspension and term of the suspension.

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

Authority G.S. 113-134; 113-300.7; 143B-289.52.

15A NCAC 030 .0606 APPEALS

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

Authority G.S. 113-134; 113-300.7; 143B-289.52.