

NORTH CAROLINA  
MARINE FISHERIES COMMISSION  
RULES

APRIL 1, 2020



SUPPLEMENT – MAY 1, 2021

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

THE FOLLOWING RULES ARE READOPTED OR AMENDED  
EFFECTIVE MARCH 17, 2021 OR MAY 1, 2021.

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

**SUBCHAPTER 03M – FINFISH**

**SECTION .0500 – OTHER FINFISH**

**15A NCAC 03M .0509 TARPON**

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

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

**SUBCHAPTER 03O – LICENSES, LEASES, FRANCHISES, AND PERMITS**

**SECTION .0100 – LICENSES**

**15A NCAC 03O .0108 LICENSE AND COMMERCIAL FISHING VESSEL REGISTRATION TRANSFERS**

- (a) To transfer a license or Commercial Fishing Vessel Registration, the license or registration shall not be expired prior to transfer.
- (b) Upon transfer of a license or Commercial Fishing Vessel Registration, the transferee becomes the licensee and assumes the privileges of holding the license or Commercial Fishing Vessel Registration.
- (c) A transfer application including a certification statement form shall be provided by the Division of Marine Fisheries. A transfer application shall be completed for each transfer including, but not limited to:
  - (1) the information required as set forth in Rule .0101(a) of this Section;
  - (2) a notarized statement from the transferee listing any violations involving marine or estuarine resources in the State of North Carolina during the previous three years; and
  - (3) a notarized statement from the transferee that the information and supporting documentation submitted with the transfer application is true and correct, and that the transferee acknowledges that it is unlawful for a person to accept transfer of a license for which they are ineligible.
- (d) A completed transfer application shall be returned to an office of the Division by mail or in person, except as set forth in Paragraph (e) of this Rule.
- (e) A transfer application submitted to the Division without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- (f) A License to Land Flounder from the Atlantic Ocean shall only be transferred:
  - (1) with the transfer of the ownership of a vessel that the licensee owns that individually met the eligibility requirements of Rule .0101 (b)(1)(A) and (b)(1)(B) of this Section to the new owner of that vessel; or
  - (2) by the owner of a vessel to another vessel under the same ownership.Transfer of a License to Land Flounder from the Atlantic Ocean transfers with it all flounder landings from the Atlantic Ocean associated with that vessel. Any transfer of license under this Paragraph shall only be processed through the Division of Marine Fisheries Morehead City Headquarters Office and no transfer is effective until approved and processed by the Division.
- (g) Transfer of a Commercial Fishing Vessel Registration: If transferring ownership of a vessel bearing a current Commercial Fishing Vessel Registration, the new owner:
  - (1) shall follow the requirements in Rule .0101 of this Section and pay a replacement fee as set forth in Rule .0107 of this Section for a replacement Commercial Fishing Vessel Registration; and
  - (2) shall submit a transfer application with the signatures of the former owner and the new owner notarized.
- (h) Transfer of a Standard or Retired Standard Commercial Fishing License:
  - (1) It is unlawful for a person to accept transfer of a Standard or Retired Standard Commercial Fishing License for which they are ineligible. Grandparents, grandchildren, and legal guardians of an individual are eligible to transfer a license and receive a transferred license.

- (2) A Standard or Retired Standard Commercial Fishing License shall only be transferred if both the transferor and the transferee have no current suspensions or revocations of any Marine Fisheries license privileges. In the event of the death of the transferor, this requirement shall only apply to the transferee.
- (3) For purposes of effecting transfers under this Paragraph:
  - (A) "business" shall mean corporations and limited liability companies that have been registered with the Secretary of State; and
  - (B) "owner" shall mean owner, shareholder, or manager of a business.
- (4) At the time of the transfer of a Standard or Retired Standard Commercial Fishing License, the transferor shall indicate the retainment or transfer of the landings history associated with that Standard or Retired Standard Commercial Fishing License. The transferor may retain a landings history only if the transferor holds an additional Standard or Retired Standard Commercial Fishing License. Transfer of a landings history is all or none.
- (5) To transfer a Standard or Retired Standard Commercial Fishing License, in addition to the requirements in Paragraph (c) of this Rule, the following information is required:
  - (A) information on the transferee as set forth in Rule .0101 of this Section;
  - (B) notarization of the transferor's and the transferee's signatures on the transfer application; and
  - (C) if the transferor is retiring from commercial fishing, evidence showing that such retirement has in fact occurred, which may include, but is not limited to, evidence of the transfer of all the transferor's Standard Commercial Fishing Licenses, sale of all the transferor's registered vessels, or discontinuation of any active involvement in commercial fishing.
- (6) The Standard or Retired Standard Commercial Fishing License that is being transferred shall be surrendered to the Division at the time of the transfer application.
- (7) Fees:
  - (A) The transferee shall pay a replacement fee as set forth in Rule .0107 of this Section.
  - (B) The transferee shall pay the differences in fees as specified in G.S. 113-168.2(e) or G.S. 113-168.3(b) if the transferee is a non-resident.
  - (C) The transferee shall pay the differences in fees as specified in G.S. 113-168.2(e) if the license to be transferred is a Retired Standard Commercial Fishing License and the transferee is less than 65 years old.
- (8) Transfer of Standard or Retired Standard Commercial Fishing License for a Business:
  - (A) An individual holding a Standard or Retired Standard Commercial Fishing License may transfer their license to a business in which the license holder is also an owner of the business in accordance with application requirements as set forth in Rule .0101(a) of this Section.
  - (B) If a business is dissolved, the business may transfer the license or licenses of the business to an individual owner of the dissolved business. A dissolved business holding multiple licenses may transfer one license or multiple licenses to one owner or multiple owners or any combination thereof. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
  - (C) If a business is sold, the business may transfer the license or licenses of the business to the successor business at the time of sale.
  - (D) If an owner leaves the business, any license owned by that owner may be transferred back to themselves as an individual at the time the owner leaves the business, provided the owner was the last individual to own the license before the business owned the license. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
- (9) Transfer of Standard or Retired Standard Commercial Fishing License for a Deceased Licensee:
  - (A) If an immediate surviving family member of the deceased licensee is eligible to hold the deceased licensee's Standard Commercial Fishing License or Retired Standard Commercial Fishing License, the Administrator or Executor shall give written notification within six months after the Administrator or Executor qualifies under G.S. 28A to the Division of the request to transfer the deceased's license to the estate Administrator or Executor.
  - (B) A transfer to the Administrator or Executor shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph. The Administrator or Executor shall provide a copy of the deceased licensee's death certificate, a copy of the certificate of administration, and a list of eligible immediate family members to the Division.
  - (C) The Administrator or Executor shall only transfer a license in the Administrator or Executor name on behalf of the estate to an eligible surviving family member. The surviving family member transferee shall only transfer the license to a third party purchaser of the deceased licensee's fishing vessel. Transfers shall be made according to the provisions of Subparagraphs (2) through (4) of this Paragraph.

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

## **SUBCHAPTER 03R – DESCRIPTIVE BOUNDARIES**

### **SECTION .0100 – DESCRIPTIVE BOUNDARIES**

#### **15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS**

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

- (1) Roanoke Sound:  
Inner Shallowbag Bay - west of a line beginning on the northeast shore at a point 35° 54.6729' N – 75° 39.8099' W; running southerly to the southeast shore to a point 35° 54.1722' N – 75° 39.6806' W;
- (2) in the Pamlico Long Sound Area:
  - (a) Long Shoal River - north of a line beginning at the 5th Avenue Canal at a point 35° 35.2120' N – 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N – 75° 51.2000' W;
  - (b) Pains Bay - east of a line beginning on Pains Point at a point 35° 35.0666' N – 75° 51.2000' W; running southerly to Rawls Island to a point 35° 34.4666' N – 75° 50.9666' W; running easterly to the east shore to a point 35° 34.2309' N – 75° 50.2695' W;
  - (c) Wysocking Bay - northwest of a line beginning at Benson Point at a point 35° 22.9684' N – 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N – 76° 01.3155' W;
  - (d) Juniper Bay-Cunning Harbor - north of a line beginning on the west shore of Juniper Bay at a point 35° 20.6217' N – 76° 15.5447' W; running easterly to a point 35° 20.4372' N – 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point 35° 20.3413' N – 76° 12.3378' W;
  - (e) Swanquarter Bay - north of a line beginning at The Narrows at a point 35° 20.9500' N – 76° 20.6409' W; running easterly to the east shore to a point 35° 21.5959' N – 76° 18.3580' W;
  - (f) Deep Cove - The Narrows - north and east of a line beginning on the west shore at a point 35° 20.9790' N – 76° 23.8577' W; running southeasterly to Swanquarter Island to a point 35° 20.5321' N – 76° 22.7869' W; and west of a line at The Narrows beginning on the north shore to a point 35° 20.9500' N – 76° 20.6409' W; running southerly to Swanquarter Island to a point 35° 20.7025' N – 76° 20.5620' W;
  - (g) Rose Bay - north of a line beginning on Long Point at a point 35° 23.3404' N – 76° 26.2491' W; running southeasterly to Drum Point to a point 35° 22.4891' N – 76° 25.2012' W;
  - (h) Spencer Bay - northwest of a line beginning on Roos Point at a point 35° 22.3866' N – 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N – 76° 26.2491' W;
  - (i) Abel Bay - northeast of a line beginning on the west shore at a point 35° 23.6463' N – 76° 31.0003' W; running southeasterly to the east shore to a point 35° 22.9353' N – 76° 29.7215' W;
  - (j) Mouse Harbor - west of a line beginning on Persimmon Tree Point at a point 35° 18.3915' N – 76° 29.0454' W; running southerly to Yaupon Hammock Point to a point 35° 17.1825' N – 76° 28.8713' W;
  - (k) Big Porpoise Bay - northwest of a line beginning on Big Porpoise Point at a point 35° 15.6993' N – 76° 28.2041' W; running southwesterly to Middle Bay Point to a point 35° 14.9276' N – 76° 28.8658' W;
  - (l) Middle Bay - west of a line beginning on Deep Point at a point 35° 14.8003' N – 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N – 76° 29.6123' W;
  - (m) Jones Bay - west of a line beginning on Mink Trap Point at a point 35° 13.4968' N – 76° 31.1040' W; running southerly to Boar Point to a point 35° 12.3253' N – 76° 31.2767' W; and
  - (n) in the Bay River Area:
    - (i) Bonner Bay - southeast of a line beginning on the west shore at a point 35° 09.6281' N – 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N – 76° 35.2587' W; and
    - (ii) Gales Creek-Bear Creek - north and west of a line beginning on Sanders Point at a point 35° 11.2833' N – 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N – 76° 34.2833' W;
- (3) in the Pamlico and Pungo Rivers Area:
  - (a) Pungo River - north of a line beginning on the west shore at a point 35° 32.2000' N – 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N – 76° 28.1500' W;

- (b) Pungo Creek - west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N – 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N – 76° 37.7590' W;
  - (c) Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N – 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N – 76° 28.6766' W;
  - (d) Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N – 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N – 76° 32.7361' W;
  - (e) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N – 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N – 76° 31.9641' W;
  - (f) Pamlico River - west of a line beginning on Ragged Point at a point 35° 27.5768' N – 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N – 76° 55.5253' W;
  - (g) North Creek - north of a line beginning on the west shore at a point 35° 25.3988' N – 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N – 76° 39.6712' W;
  - (h) South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N – 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N – 76° 41.7870' W;
  - (i) Bond Creek/Muddy Creek - south of a line beginning on Fork Point at a point 35° 20.7534' N – 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N – 76° 41.4645' W;
  - (j) in the Goose Creek Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N – 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N – 76° 37.0965' W; and
  - (k) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N – 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N – 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N – 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N – 76° 31.7226' W;
- (4) in the Neuse River Area:
- (a) Lower Broad Creek - west of a line beginning on the north shore at a point 35° 05.8314' N – 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N – 76° 35.7249' W;
  - (b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N – 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N – 76° 41.9961' W;
  - (c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N – 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N – 76° 45.4140' W;
  - (d) Goose Creek - north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N – 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N – 76° 56.0092' W;
  - (e) Upper Broad Creek - northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N – 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N – 76° 56.7865' W;
  - (f) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 54.5424' N – 76° 45.7252' W; running easterly to the east shore to a point 34° 54.4853' N – 76° 45.4022' W; and
  - (g) in the Adams Creek Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N – 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N – 76° 38.8153' W;
- (5) Newport River - west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N – 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N – 76° 43.3296' W;
  - (6) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
  - (7) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
  - (8) Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N – 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N – 77° 42.2400' W;
  - (9) Pages Creek - all waters west of a line beginning on the north shore at a point 34° 16.1610' N – 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N – 77° 46.1670' W;
  - (10) Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N – 77° 49.1230' W; running southerly near the dredged channel to a point 34° 12.4130' N – 77° 49.2110' W;
  - (11) Cape Fear River - all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the Intracoastal Waterway and the Cape Fear River ship channel at a point 34° 01.5780' N – 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N – 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N – 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N – 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to the point of origin;



- (12) Lockwood Folly River - all waters north of a line beginning on Howells Point at a point 33° 55.3680' N – 78° 12.7930' W and running in a westerly direction along the Intracoastal Waterway near Intracoastal Waterway Marker "46" to a point 33° 55.3650' N – 78° 13.8500' W;
- (13) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N – 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N – 78° 22.8670' W; and
- (14) Davis Creek - all waters east of a line beginning on Horse Island at a point 33° 55.0160' N – 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N – 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N – 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the Intracoastal Waterway and Davis Canal to a point 33° 55.2690' N – 78° 11.6550' W.

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

### **15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS**

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

- (1) Roanoke Sound:
  - (a) Outer Shallowbag Bay - west of a line beginning on Baum Point at a point 35° 55.1461' N – 75° 39.5618' W; running southeasterly to Ballast Point to a point 35° 54.6250' N – 75° 38.8656' W; including the canal on the southeast shore of Shallowbag Bay; and
  - (b) Kitty Hawk Bay/Buzzard Bay - within the area designated by a line beginning at a point on the east shore of Colington Creek at a point 36° 02.4360' N – 75° 42.3189' W; running westerly to a point 36° 02.6630' N – 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N – 75° 42.3889' W; running southwesterly to a point 36° 02.1483' N – 75° 42.4329' W; running along the shoreline to a point 36° 01.6736' N – 75° 42.5313' W; running southwesterly to a point 36° 01.5704' N – 75° 42.5899' W; running along the shoreline to a point 36° 00.9162' N – 75° 42.2035' W; running southeasterly to a point 36° 00.8253' N – 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N – 75° 41.7284' W; running southwesterly to a point 35° 59.9597' N – 75° 41.7682' W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N – 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N – 75° 32.7361' W; running northerly along the shoreline to the point of beginning;
- (2) in the West Bay Area:
  - (a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N – 76° 24.0947' W; running easterly to the east shore to a point 34° 57.4871' N – 76° 23.0737' W;
  - (b) Long Bay-Ditch Bay - west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N – 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point 34° 57.2120' N – 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point 34° 56.7633' N – 76° 26.3927' W; and
  - (c) Turnagain Bay - south of a line beginning on the west shore at a point 34° 59.4065' N – 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N – 76° 29.3557' W;
- (3) in the Core Sound Area:
  - (a) Cedar Island Bay - northwest of a line beginning near the gun club dock at a point 34° 58.7203' N – 76° 15.9645' W; running northeasterly to the south shore to a point 34° 57.7690' N – 76° 16.8781' W;
  - (b) Thorofare Bay-Barry Bay - northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N – 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N – 76° 19.1908' W;
  - (c) Nelson Bay - northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N – 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N – 76° 23.7620' W;
  - (d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N – 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N – 76° 25.0534' W; and
  - (e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N – 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N – 76° 28.7955' W;

- (4) in the North River Area:
- (a) North River - north of a line beginning on the west shore at a point 34° 46.0383' N – 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N – 76° 35.4933' W; and
  - (b) Ward Creek - east of a line beginning on the north shore at a point 34° 46.2667' N – 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N – 76° 35.1767' W;
- (5) New River - all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N – 77° 23.9940' W; running southerly to the south side of the bridge at a point 34° 34.6000' N – 77° 23.9710' W;
- (6) Chadwick Bay - all waters west of a line beginning on the northeast side of Chadwick Bay at a point 34° 32.5630' N – 77° 21.6280' W; running southeasterly to a point near Marker "6" at 34° 32.4180' N – 77° 21.6080' W; running westerly to Roses Point at a point 34° 32.2240' N – 77° 22.2880' W; following the shoreline in Fullard Creek to a point 34° 32.0340' N – 77° 22.7160' W; running northwesterly to a point 34° 32.2210' N – 77° 22.8080' W; following the shoreline to the west point of Bump's Creek at a point 34° 32.3430' N – 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N – 77° 22.3830' W; following the shoreline of Chadwick Bay back to the point of origin; and
- (7) Intracoastal Waterway - all waters in the Intracoastal Waterway maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the Intracoastal Waterway maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City.

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

#### **15A NCAC 03R .0117 OYSTER SANCTUARIES**

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

- (1) Pamlico Sound area:
- (a) Croatan Sound: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
  - (b) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
  - (c) Pea Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3680' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
  - (d) Long Shoal: within the area described by a line beginning at a point 35° 33.8600' N - 75° 49.9000' W; running southerly to a point 35° 33.8600' N - 75° 49.7670' W; running westerly to a point 35° 33.7510' N - 75° 49.7670' W; running northerly to a point 35° 33.7510' N - 75° 49.9000' W; running easterly to the point of beginning.
  - (e) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3550' N - 75° 55.9190' W; running southerly to a point 35° 27.1010' N - 75° 55.9190' W; running westerly to a point 35° 27.1010' N - 75° 56.2300' W; running northerly to a point 35° 27.3550' N - 75° 56.2300' W; running easterly to the point of beginning.
  - (f) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.

- (g) West Bluff: within the area described by a line beginning at a point 35° 18.3160' N - 76° 10.2960' W; running southerly to a point 35° 18.3160' N - 76° 10.0690' W; running westerly to a point 35° 18.1290' N - 76° 10.0690' W; running northerly to a point 35° 18.1290' N - 76° 10.2960' W; running easterly to the point of beginning.
  - (h) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
  - (i) Swan Island: within the area described by a line beginning at a point 35° 05.6170' N - 76° 27.5040' W; running southerly to a point 35° 05.6020' N - 76° 26.7650' W; running westerly to a point 35° 05.4850' N - 76° 26.7640' W; running northerly to a point 35° 05.4990' N - 76° 27.5030' W; running easterly to the point of beginning.
  - (j) Raccoon Island: within the area described by a line beginning at a point 35° 05.4760' N - 76° 23.5370' W; running southerly to a point 35° 05.4760' N - 76° 23.4040' W; running westerly to a point 35° 05.3860' N - 76° 23.4040' W; running northerly to a point 35° 05.3680' N - 76° 23.5370' W; running easterly to the point of beginning.
  - (k) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- (2) Neuse River area:
- (a) Little Creek: within the area described by a line beginning at a point 35° 02.6940' N - 76° 30.9840' W; running southerly to a point 35° 02.6940' N - 76° 30.7940' W; running westerly to a point 35° 02.5380' N - 76° 30.7940' W; running northerly to a point 35° 02.5380' N - 76° 30.9840' W; running easterly to the point of beginning.
  - (b) Neuse River: within the area described by a line beginning at a point 35° 00.4910' N - 76° 31.9350' W; running southerly to a point 35° 00.3750' N - 76° 31.9350' W; running westerly to a point 35° 00.3750' N - 76° 32.0750' W; running northerly to a point 35° 00.4910' N - 76° 32.0750' W; running easterly to the point of beginning.

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

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

**SUBCHAPTER 18A – SANITATION**

**SECTION .0100 – HANDLING: PACKING: AND SHIPPING OF CRUSTACEA MEAT**

**15A NCAC 18A .0140 FLOORS**

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

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

**15A NCAC 18A .0141 WALLS AND CEILINGS**

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

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

**15A NCAC 18A .0142 LIGHTING**

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

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

**15A NCAC 18A .0143 VENTILATION**

All rooms and areas shall be ventilated.

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

**15A NCAC 18A .0146 PREMISES**

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

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

**15A NCAC 18A .0150 SEWAGE DISPOSAL**

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

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

**15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES**

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

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

**15A NCAC 18A .0155 SUPPLY STORAGE**

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

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

**15A NCAC 18A .0159 SEPARATION OF OPERATIONS**

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

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

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

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

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

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

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

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

**15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION**

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

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

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

**15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF**

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

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

**15A NCAC 18A .0169 FREEZING**

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

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

**15A NCAC 18A .0170 SHIPPING**

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

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

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

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

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

**15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS**

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

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

**15A NCAC 18A .0179 RECALL PROCEDURE**

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

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

**15A NCAC 18A .0180 SAMPLING AND TESTING**

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

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

**15A NCAC 18A .0188 HAZARD ANALYSIS**

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

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

**15A NCAC 18A .0189 HACCP PLAN**

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

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

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

**15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS**

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

- (1) safety of water;
- (2) condition and cleanliness of food contact surfaces;
- (3) prevention of cross contamination;
- (4) maintenance of hand washing, hand sanitizing, and toilet facilities;
- (5) protection of crustacea or crustacea meat, crustacea or crustacea meat packaging materials, and food contact surfaces from adulteration;
- (6) proper labeling, storage, and use of toxic compounds;
- (7) control of employees with adverse health conditions; and
- (8) exclusion of pests from the facility.

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

*Readopted Eff. May 1, 2021.*

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

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

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

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

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

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

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

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

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

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

## **SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**

### **15A NCAC 18A .0901 DEFINITIONS**

The following definitions shall apply to this Section.

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

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

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

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

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

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

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

### **15A NCAC 18A .0903 SANITARY SURVEY**

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

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

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

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

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

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

All other reclassifications may be made without a sanitary survey.

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

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

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

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

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

### **15A NCAC 18A .0904 APPROVED WATERS**

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

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

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

### **15A NCAC 18A .0905 CONDITIONALLY APPROVED WATERS**

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

- (1) the sanitary survey indicates the shellfish growing waters will not meet the approved waters classification criteria as set forth in Rule .0904 of this Section under all conditions, but will meet those criteria under certain conditions;

- (2) the conditions when the shellfish growing waters will meet the approved waters classification criteria are known and predictable;
- (3) the public bottom within those shellfish growing waters support a population of harvestable shellfish; and
- (4) staff are available to carry out the requirements defined in the management plan, as set forth in Paragraph (b) of this Rule.

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

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

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

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

#### **15A NCAC 18A .0906 RESTRICTED AREAS**

(a) Shellfish growing waters may be classified as restricted if:

- (1) a sanitary survey indicates there are no significant point sources of pollution; and
- (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels that shellstock can be made safe for human consumption by either relaying or depuration.

(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and 15A NCAC 18A .0300.

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

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

- (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100 milliliters;
- (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100 milliliters;
- (3) an estimated 90<sup>th</sup> percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
- (4) an estimated 90<sup>th</sup> percentile of 163 CFU per 100 milliliters for a membrane filter membrane-Thermotolerant Escherichia coli (mTEC) test.

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

#### **15A NCAC 18A .0907 PROHIBITED WATERS**

Shellfish growing waters shall be classified as prohibited if:

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

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

#### **15A NCAC 18A .0908 UNSURVEYED AREAS**

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

#### **15A NCAC 18A .0909 BUFFER ZONES**

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

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

(b) Buffer zones shall be classified as prohibited.

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

#### **15A NCAC 18A .0910 RECLASSIFICATION**

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

#### **15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY**

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

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

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

#### **15A NCAC 18A .0914 LABORATORY PROCEDURES**

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

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

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

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

*Amended Eff. September 1, 1991; September 1, 1990;  
Readopted Eff. May 1, 2021.*

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

### **15A NCAC 18A .3401 DEFINITIONS**

The following definitions shall apply to this Section:

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

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

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

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

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

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

(a) Tier I Swimming areas:

- (1) A pending swimming advisory shall be issued by the Division of Marine Fisheries if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.
- (2) A swimming advisory shall be issued by the Division if either of the following standards are exceeded during the swimming season:
  - (A) Both the initial water sample and resample collected from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(2) of this Section; or
  - (B) The most recent five water samples collected within a 30-day period from a swimming area are equal to or exceed the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

(b) Tier II swimming areas:

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

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

(d) Signs shall state the following:

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

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

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

(a) The Division of Marine Fisheries shall post at least one sign at a wastewater treatment plant that discharges into swimming waters, which shall stay posted until the discharge is removed. The sign for a wastewater treatment plant discharge shall state the following:

WARNING! SEWAGE TREATMENT EFFLUENT DISCHARGE SITE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

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

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

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

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

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

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

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

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

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

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

*History Note: Authority G.S. 113-134; 113-221.3; 143B-289.52;*

*Eff. January 1, 2004;*  
*Readopted Eff. April 1, 2021.*

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

- (a) A pending swimming advisory shall be rescinded by the Division of Marine Fisheries via social media release when the resample collected meets the bacteriological limit set forth in Rule .3402(a)(2) of this Section.
- (b) A Tier I swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, when both of the following conditions are met:
  - (1) the geometric mean has met the bacteriological limit set forth in Rule .3402(a)(1) of this Section; and
  - (2) two consecutive weekly water samples meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.
- (c) A Tier II swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, after water samples meet the bacteriological limit set forth in Rule .3402(b) of this Section.
- (d) A swimming advisory resulting from a flood water discharge or the discharge of dredge material shall be rescinded by the Division via social media and news release, including the removal of signs, 24 hours after the discharge has ceased, to allow for tidal dispersion.
- (e) A swimming advisory resulting from a wastewater system failure shall be rescinded by the Division via social media and news release, including the removal of signs, when failure has been corrected and water samples collected meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

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

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

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

# INDEX

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

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

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

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◆ = go to <http://portal.ncdenr.org/web/mf/proclamations> to check for proclamations

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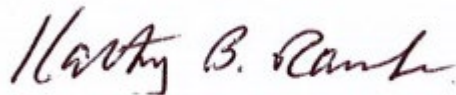
THE ORIGINAL AND OFFICIAL COPY OF TITLE 15A,  
CHAPTER 03 AND SUBCHAPTER 18A OF THE N.C.  
ADMINISTRATIVE CODE ARE ON FILE IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS AND ARE AVAILABLE FOR  
PUBLIC INSPECTION DURING NORMAL WORKING HOURS.

THIS DOCUMENT IS AVAILABLE FROM:  
N.C. DIVISION OF MARINE FISHERIES  
P.O. BOX 769  
3441 ARENDELL STREET  
MOREHEAD CITY, NC 28557  
1-800-682-2632 or 252-726-7021  
<http://portal.ncdenr.org/web/mf>

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### CERTIFICATION

PURSUANT TO G.S. 113-221 (B) AND G.S. 113-221 (G), THIS IS TO  
CERTIFY THAT THE PRECEDING “NORTH CAROLINA MARINE  
FISHERIES COMMISSION RULES APRIL 1, 2020, SUPPLEMENT - MAY  
1, 2021” IS THE OFFICIAL CODIFICATION OF THE RULES OF THE N.C.  
MARINE FISHERIES COMMISSION EFFECTIVE AS OF MAY 1, 2021.



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