



RULEMAKING UPDATE

Rule Suspensions

Additional Labeling Requirements for Repacked Foreign Crab Meat

2020-2021 Rulemaking Cycle Update

2021-2022 Rulemaking Cycle "Package A" Rules

2021-2022 Rulemaking Cycle "Package B" Update



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

October 22, 2021

MEMORANDUM

TO: N.C. Marine Fisheries Commission
FROM: Steve Poland, Fisheries Management Section Chief
SUBJECT: Temporary Rule Suspension

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

No new rule suspensions have occurred since the October 2020 business meeting.

Action Needed

For informational purposes only, no new action is needed at this time.

Overview

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

NCMFC RULE 15A NCAC 03M .0511 Bluefish

Suspension of this rule is for an indefinite period. Suspension of this rule allows the division to reduce bluefish creel limits in compliance with the requirements of the Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Bluefish Fishery Management Plan to reduce recreational harvest of bluefish. This suspension was implemented in Proclamation FF-1-2020.

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

Suspension of portion of this rule is for an indefinite period. Suspension of this rule allows the division to implement year around small mesh gill net attendance requirements in certain areas of the Tar, Pamlico and Neuse River 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 “hot spot” areas of the state. This suspension continues in Proclamation M-19-2021.

NCMFC Rule 15A NCAC 03R .0110 (4)(5) Crab Spawning Sanctuaries

Suspension of portions of this rule is for an indefinite period. Suspension of this rule allows the division to revise the boundaries for the Drum Inlet and Barden Inlet crab spawning sanctuaries in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. This suspension was implemented in Proclamation M-7-2020.

NCMFC Rules 15A NCAC 03L .0201 (a)(b) Crab Harvest Restrictions, 03L .0203 (a) Crab Dredging and 03J .0301 (g)(h) Pots

Suspension of portions of these rules is for an indefinite period. Suspension of these rules allows the division to implement requirements for the blue crab fishery in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. These suspensions were implemented in Proclamation M-1-2021.

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

Continued suspension of portions of this rule is for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the May 2018 Revision to Amendment 1 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019.

NCMFC 15A NCAC 03M .0516 Cobia

Continued suspension of this rule is for an indefinite period. This allows the division to manage the commercial and recreational cobia fisheries in accordance with management actions taken by the commission and in accordance with the Atlantic States Marine Fisheries Commission’s Interstate Cobia Fishery Management Plan. This suspension was continued in Proclamation FF-25-2021.

NCMFC Rule 15A NCAC 03J .0501 Definitions and Standards for Pound Nets and Pound Net Sets

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

NCMFC Rule 15A NCAC 03M .0519 Shad & 03Q .0107 Special Regulations: Joint Waters

Continued suspension of portions of these rules is for an indefinite period. This allows the division to change the season and creel limit for American shad under the management framework of the North Carolina American Shad Sustainable Fishery Plan. These suspensions were continued in Proclamation FF-2-2021.



ROY COOPER
Governor

ELIZABETH S. BISER
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KATHY B. RAWLS
Director

October 19, 2021

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Shannon Jenkins, Section Chief
Shawn Nelson, Inspections Program Supervisor
Shellfish Sanitation and Recreational Water Quality Section

SUBJECT: Additional Labeling Requirements for Repacked Foreign Crab Meat

Issue

At its May 20, 2021 business meeting, the Marine Fisheries Commission (MFC) voted to develop rules for additional labeling requirements for repacked foreign crab meat used for sale in North Carolina. Specifically, the approved motion read that “the DMF develop rules so that any repacked crab meat container used for sale in the State of North Carolina that does not contain 100% domestic crab meat have an 18 type bold permanent print or larger statement of the country of origin clearly on the lid and two sides of the cup, and that a checkoff panel or stamped country of origin not be allowed.”

The action by the MFC was a follow-up to previous rulemaking that would make it unlawful for North Carolina crab processors to repack foreign crab meat. Proposed MFC Rule 03L .0210 (REPACKING OF FOREIGN CRAB MEAT PROHIBITED), which is currently in the rulemaking process, was a result of negative publicity regarding fraudulent representation of foreign crab meat as “Product of the USA” by certain firms in Virginia and North Carolina. The action by the MFC at the May 20, 2021 business meeting leading to additional labeling requirements for repacked foreign crab meat occurred after discussion of a possible loophole to the proposed MFC Rule 03L .0210 whereby North Carolina processors could have foreign crab meat repacked into their branded container in another state and then shipped to North Carolina to be sold. Discussion also included the possibility that small text, stamped on text, or a checkoff box for the required country of origin label could be used to make it difficult for consumers to determine the origin of the product.

Findings

- The language of the MFC motion as passed would necessitate additional labeling requirements for repacked foreign crab meat that is sold in North Carolina. This would apply to any North Carolina crab processors that may engage an out of state facility to repack foreign crab meat for them to sell in North Carolina, as well as an unknown number of crab

processors in other states whose repacked foreign crab meat product may already be sold in North Carolina.

- These firms would need to change the labeling on their lids and containers in order to comply with the additional labeling requirements. It is unknown whether those out of state firms would change their labeling and containers in order to continue selling that product in the State. A change as contemplated above could also affect grocery stores and retail outlets in North Carolina statewide that market foreign crab meat that has been repacked into a container other than the original, should the availability of that product change.
- Possible enforcement challenges for North Carolina Marine Patrol could result due to the potentially large number and geographic spread of retail outlets in North Carolina that market repacked foreign crab meat. Other challenges may include differentiating foreign crab meat that has been repacked versus foreign crab meat that remains in the original container. With that said, it is possible that if the additional labeling requirements went into effect, only compliant containers would be used after awareness and education about the new rule.
- Management options presented within the Issue Paper include the status quo, which would continue to allow repacked foreign crab meat to be sold in North Carolina without additional labeling requirements. The other option presented in proposed MFC Rule 03L .0211 (ADDITIONAL LABELING REQUIREMENTS FOR REPACKED FOREIGN CRAB MEAT) would require more noticeable country of origin labeling in order that the consumer can more easily differentiate domestic versus repacked foreign crab meat product.

Action Needed

The Marine Fisheries Commission will vote on their preferred management option.

For more information, please refer to the full document titled “ADDITIONAL LABELING REQUIREMENTS FOR REPACKED FOREIGN CRAB MEAT ISSUE PAPER” that is included in the briefing materials.

ADDITIONAL LABELING REQUIREMENTS FOR REPACKED FOREIGN CRAB MEAT ISSUE PAPER

September 30, 2021

I. ISSUE

By North Carolina Marine Fisheries Commission (MFC) rule, require that any repacked crab meat container that contains foreign crab meat for sale in the State of North Carolina include enhanced country of origin labeling for the benefit of the consumer.

II. ORIGINATION

At the May 20, 2021, MFC meeting, the MFC voted to approve Notice of Text for proposed MFC Rule 15A NCAC 03L .0210 (see Appendix I), which would make it unlawful for crustacea processors in North Carolina to repack foreign crab meat into another container. Rulemaking for this issue resulted from instances of foreign crab meat being repacked and fraudulently represented as domestic crab product which hurt consumer confidence and damaged the reputation of the state's crab meat industry, according to discussion by the MFC.

During discussion at that meeting, Commissioner Doug Cross relayed concerns of a possible loophole to this proposed rule where North Carolina processors could have foreign crab meat repacked into their branded container in another state and then shipped to North Carolina and sold within North Carolina. The Commissioner also expressed that the already-required foreign country of origin label could be hidden in small text or other methods employed to make it more difficult for consumers to determine the origin of the product. The MFC subsequently voted to develop rules to require that any repacked crab meat container with foreign crab meat used for sale in North Carolina have a size 18-type permanent print or larger statement of the country of origin on the lid and two sides of the cup, and that a check-off panel or stamped country of origin not be allowed.

III. BACKGROUND

Crab Picking Industry in North Carolina

Blue crab (*Callinectes sapidus*) supports the largest and most valuable commercial fishery in North Carolina (NCDMF 2020). An important part of this fishery involves the harvest of hard-shell crabs from North Carolina waters to be sold to crab processors certified and permitted by the North Carolina Division of Marine Fisheries (DMF).

Crab processors typically cook baskets of live crabs in a steam retort cooker under pressure to eliminate food-borne pathogens such as bacteria and produce a product that is shelf-stable. The crab processor may also use pasteurization as an additional process to further extend the shelf-life of the product. Pasteurization involves an additional heating and cooling process after the meat is placed in a hermetically sealed container, typically a metal can.

Repacking

Processors that are certified and permitted by DMF as a crustacea repacker can also repack crab meat that has been previously cooked and packed initially. Crab processors who repack usually do so in order to market the product in their own branded containers. Repacking involves transferring crustacea product from the original packed container into the repacker's branded container using sanitary techniques in accordance with North Carolina MFC Rules (15A NCAC 18A Section .0134-.0191, *Handling: Packing: and Shipping of Crustacea Meat*). The repacker is required to label the repacked container with their name, address, certification number followed by the letters "RP", and a code indicating the repack date.

Repacking of Foreign Crab Meat

In addition to repacking domestically sourced crab product, North Carolina processors can currently also repack product from foreign sources. Sources include Asian and South American countries such as Indonesia, Vietnam,

China, Mexico, Brazil, and Venezuela. Imports include the meat from two types of “swimming crabs” that are related to blue crab: *Portunidae* (family that includes blue crabs) and *Callinectes* (blue crab genus). Processors who repack meat from foreign sources typically receive pasteurized product in cans and then repack the product directly into their own branded plastic containers. In addition to the labeling requirements for repacked containers described above, containers that are repacked with foreign crab meat are required to be labeled in accordance with Federal labeling requirements as set forth in MFC Rules 15A NCAC 18A .0136 APPLICABILITY OF RULES and .0173 REPACKING (see Appendix I for proposed readoption of these rules, currently underway). Effectively, this requires the country of origin of the crab meat product to be included on the container.

During the “Issues from Commissioners” portion of the Feb. 20, 2020, MFC meeting, Commissioner Doug Cross requested that the Director of DMF consider developing an information paper regarding the repacking of foreign crab meat. Commissioner Cross requested the DMF to examine the possibility of making it unlawful to repack or possess foreign crab meat in North Carolina unless it remains in the original container. The Commissioner stated that recent publicity regarding foreign crab meat being fraudulently represented as local blue crab product hurts North Carolina’s crab meat reputation. He further stated that in his opinion the only reason for foreign crab meat to be repacked is to defraud the consumer. The request did not apply to value-added products such as crab cakes or use of foreign crab meat for restaurant use.

The information paper titled “Information on Repacking of Foreign Crab Meat in North Carolina” was presented during the next North Carolina MFC meeting on May 14, 2020. The paper covered several topics. These included the negative publicity regarding fraudulent representation of foreign crab meat as “Product of the USA” by firms including one in North Carolina, and the potential economic impact to North Carolina crab processors that currently participate in the repacking of foreign crab meat if the practice was to be prohibited. It should be noted that since the presentation of the information paper, another North Carolina processor plead guilty to representing and selling foreign crab meat as “Product of USA”.

After presentation of the information paper, Commissioner Cross reiterated his view that the repacking of foreign crab meat into a container other than the original is designed to defraud the consumer. He also stated that it results in an economic advantage for those firms repacking foreign crab meat compared to those firms that pack domestic crab meat and that it also reduces the price of domestic crab meat. He offered that consumers would be more confident if they know that foreign crab meat cannot be repacked in North Carolina. After further discussion and by unanimous vote, the MFC passed a motion “to make it illegal to repack any imported crab meat in North Carolina into another container for resale in the State of North Carolina through the rulemaking process.”

An issue paper titled “Proposed Rule to Prohibit Repacking of Foreign Crab Meat in North Carolina” was developed and presented at the November 19-20, 2020 MFC business meeting. The MFC voted to begin the rulemaking process to adopt a proposed new MFC Rule 15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED, which would make it unlawful for North Carolina processors to repack foreign crab meat. This rule is under development and the latest step in the progression occurred when the MFC voted to approve Notice of Text for the rule at the May 20, 2021, MFC business meeting (see Appendix I). The MFC is accepting public comment until October 1st, 2021. The rule is expected to have an effective date of sometime after April 1, 2022, with the exact date being unknown due to the rule being automatically subject to legislative review under a separate requirement.

During discussion of the proposed rule at the May 20, 2021, business meeting, Commissioner Cross relayed concerns of a possible loophole to this proposed rule where North Carolina processors could have foreign crab meat repacked into their branded container in another state and then shipped to North Carolina and sold within North Carolina. The Commissioner also expressed that techniques could be used to make the already-required foreign country of origin label difficult for consumers to see, such as using small text, or using stamped on text or a check-off box indicating the country of origin. He indicated this could defraud the consumer or at the very least make it more difficult for consumers to determine the origin of the product. The MFC subsequently voted to develop rules to require that any repacked crab meat container with foreign crab meat used for sale in North Carolina have a size 18-type permanent print or larger statement of the country of origin on the lid and two sides of the cup, and that a check-off panel or stamped country of origin not be allowed.

IV. AUTHORITY

U.S. Code of Federal Regulations

§ 19 CFR 134.46

N.C. General Statutes

§ 113-134. Rules.

§ 113-182. Regulation of fishing and fisheries

§ 113-221.2. Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized

§ 143B-289.52. Marine Fisheries Commission – powers and duties.

N.C. Marine Fisheries Commission Rules (As of April 1, 2020)

15A NCAC 18A .0173 Repacking

V. DISCUSSION

North Carolina General Statutes 113-134, 113-182 and 143B-289.52 provide the MFC the authority to regulate and adopt rules regarding the marine and estuarine resources within its jurisdiction. A new MFC rule in Subchapter 03L Section .0200 of the MFC rules (Crabs) appears to be the most appropriate location in the North Carolina Administrative Code for additional labeling requirements for foreign crab meat that has been repacked in other states. This would accompany proposed MFC Rule 03L .0210 in that section of rules, which would prohibit the repacking of foreign crab meat by North Carolina crab processors.

The May 20, 2021 MFC motion specifically read that “the DMF develop rules so that any repacked crab meat container used for sale in the State of North Carolina that does not contain 100% domestic crab meat have an 18 type bold permanent print or larger statement of the country of origin clearly on the lid and two sides of the cup, that a checkoff panel or stamped country of origin not be allowed.” It is important to note that the requirement would only apply to foreign crab meat that has been repacked into another container, and not foreign crab meat that remains in the initially packed container.

In accordance with the motion, proposed MFC Rule 15A NCAC 03L .0211 ADDITIONAL LABELING REQUIREMENTS FOR REPACKED FOREIGN CRAB MEAT has been drafted for consideration by the MFC (see Section VI). It should be noted that requiring the text “Product of” to precede the country of origin on the container in the proposed rule was additional to the MFC motion in order to conform to Code of Federal Regulations Title 19, Chapter 1, Part 134 (19 CFR 134). 19 CFR Section 134.46 requires the name of the country of origin preceded by “Made in,” “Product of,” or other words of similar meaning when the name of any city or location in the United States, other than the country originated, is present and may mislead or deceive the ultimate purchaser as to the actual country of origin of the article. MFC Rule 15A NCAC 18A .0173 requires repacked foreign crab meat to indicate the processor’s name and address, which would include an address in the United States; this could potentially mislead or confuse the consumer as to the origin of the product. The text “Product of” was chosen for proposed MFC Rule 15A NCAC 03L .0211 as it conforms to 19 CFR 134.46 and is the language already used in the industry, as opposed to “Made in” which does not accurately describe the crab meat product.

There are several possible effects resulting from a rule that implements additional labeling requirements for foreign crab meat that has been repacked. There have been four crustacea processing facilities in North Carolina that have engaged in the repacking of foreign crab meat in recent years. These firms would be the most likely to engage in repacking foreign crab meat out of state for sale in North Carolina if the practice is prohibited in the State due to future MFC Rule 15A NCAC 03L .0210. In addition to requiring additional labeling requirements for any North Carolina crab processors that may engage an out of state facility to repack foreign crab meat for sale in North Carolina, the rule would also affect an unknown number of crab processors in other states whose repacked foreign crab meat product is sold in North Carolina.

These firms would need to change the labeling on their lids and containers in order to comply with the requirement to list the country of origin in a minimum 18-point type in permanent print to sell in North Carolina. If those firms are

currently using a check-off box or stamp to indicate the country of origin in order to minimize the number of different containers, they would need to produce specific containers for each county or origin. It is unknown whether out of state firms would change their labeling and containers in order to continue selling that product in the State. A change as contemplated above could also affect grocery stores and retail outlets in North Carolina statewide that market foreign crab meat that has been repacked into a container other than the original, should the availability of that product change.

In the printing industry, a “point” is the height of the typeset used to print the text on the containers. One point is equal to 1/72 of an inch, so the requirement for an 18-point type is roughly 0.25 inches tall. Print of this size could require a redesign of the lid or container labeling in order to fit the country of origin on two sides of the cup and lid along with other items such as brand, graphics, name, address, certification number, ingredients, and nutrition facts. As a comparison, the State of Maryland requires a container of crab meat that contains foreign crab meat, whether repacked or not, to prominently display the country of origin in letters not smaller than 12-point type (~0.167 inches) on the principal display panel (MD COMAR 2014).

Enforcement challenges identified for North Carolina Marine Patrol include the potentially large number of grocery stores or retail outlets in North Carolina that market repacked foreign crab meat and their geographic spread. Officers would also have to differentiate repacked foreign crab meat vs. foreign crab meat that is in the original container to identify whether a product is compliant with the additional labeling requirements. Unlike North Carolina, where repacked crab meat can also be differentiated from domestic meat with the repacker’s certification number followed by the letters “RP”, Virginia does not differentiate between types of crab meat processors. Virginia crab meat products are identified only with their certification number followed by the letter “C”, whether the product has been repacked or not. Maryland does have a “CR” designation for a crab processor/repacker, but the permitting authority would allow them to use their existing containers with only the “C” crab processor designation if they became approved to repack. With that said, it can be assumed that a crab meat container from either a Virginia or Maryland processor that contains foreign crab meat with the required country of origin label has been repacked.

If the rule were to go into effect, any containers of repacked foreign crab meat that was not compliant with the additional labeling requirements would be a Class 3 misdemeanor. Depending on the circumstances, enforcement options could include a warning on the low end up to a product seizure on the high end which could result in a substantial loss for the retailer.

It is likely that after awareness and education of any new rule that only compliant containers would be sent to North Carolina and that North Carolina crab processors would proactively change the cups if they engaged in this practice. Another potential outcome, perhaps with economic impacts, is that the out of state crab meat processors may choose to not export repacked foreign crab meat to North Carolina due to the additional labeling requirement.

VI. PROPOSED RULE

15A NCAC 03L .0211 ADDITIONAL LABELING REQUIREMENTS FOR REPACKED FOREIGN CRAB MEAT

(a) Labeling requirements for repacked crab meat are described in 15A NCAC 18A .0173. Additionally, it shall be unlawful to sell foreign crab meat that has been repacked into another container unless the container is labeled in accordance with the following:

- (1) the country of origin of the crab meat preceded by “Product of” shall be displayed in bold permanent print letters not smaller than 18-point type on the lid and in two places that are on opposite sides of the container; and
- (2) a check-off panel or use of a stamp applied to the container after it was originally printed to indicate country of origin shall not be allowed to fulfill the labeling requirements in Subparagraph (a)(1) of this Paragraph.

(b) This rule does not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.

History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52; Eff. (Pending legislative review pursuant to S.L. 2019-198).

VII. PROPOSED MANAGEMENT OPTIONS

1. Status quo: continue to allow foreign crab meat that has been repacked in another state to be sold in North Carolina without additional labeling requirements.
 - + Avoids further economic impact on any North Carolina crab processors that would participate in this activity as well any grocery stores and retail outlets that market that type of product due to the additional labeling requirements.
 - Does not resolve the possible loophole identified whereby North Carolina crab processors could have foreign crab meat repacked out of state and marketed within the State.
 - Does not resolve the potential for fraud or confusion by North Carolina consumers regarding whether retail crab meat is domestic or foreign due to less obvious labeling requirements.
 - Does not comply with the MFC motion.

2. Adopt MFC Rule 15A NCAC 03L .0211 that would require additional labeling requirements for containers of repacked foreign crab meat to be sold in North Carolina.
 - + Complies with the MFC motion.
 - + Reduces the potential for fraud or confusion by North Carolina consumers regarding whether retail crab meat is domestic or foreign due to the more obvious labeling requirements.
 - May have a negative economic impact as a result of the additional labeling requirements for any North Carolina crab processors that may use out of state processors to repack foreign crab meat to sell in the State and any grocery stores or retail outlets that market that type of product.
 - Likely creates enforcement challenges for Marine Patrol, especially across the geographic spread of grocery stores and retail outlets across the state.

VII. REFERENCES CITED

NCDMF. 2020. North Carolina Division of Marine Fisheries License and Statistics Section Annual Report. North Carolina Department of Environmental Quality, Division of Marine Fisheries, Morehead City, NC.

MD COMAR. 2014. Code of Maryland Regulations, Title 10, MARYLAND DEPARTMENT OF HEALTH, Subtitle 15 FOOD, 10.15.02 Crab Meat. <http://www.dsd.state.md.us/comar/comarhtml/10/10.15.02.14.htm>

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September 7, 2021

Revised: September 14, 2021
September 30, 2021

Ancillary Item: Future amendment of MFC Rule 15A NCAC 18A .0173 REPACKING to point to proposed MFC Rule 15A NCAC 03L .0211 ADDITIONAL LABELING REQUIREMENTS FOR REPACKED FOREIGN CRAB MEAT after 03L .0211 becomes effective.

APPENDIX I.

MFC RULES APPROVED TO BEGIN RULEMAKING MAY 20, 2021 AND PUBLISHED IN THE N.C. REGISTER AUG. 2, 2021.

15A NCAC 03L .0210 is proposed for adoption as follows:

15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED

It shall be unlawful to repack foreign crab meat in North Carolina into another container. This rule shall apply to all facilities and persons permitted in accordance with Rule 15A NCAC 18A .0135. This rule does not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.

*History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 18A .0136 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0136 APPLICABILITY OF RULES

The Rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, ~~transport-transport,~~ or ship cooked crustacea or crustacea meat ~~which-that~~ has not been transformed into another product. ~~Foreign crustacea meat processed in North Carolina shall comply with all applicable Federal requirements.~~

*History Note: Authority G.S. ~~130A-230;~~113-134; 113-182; 113-221.2; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. April 1, 1997;
Readopted Eff. (Pending legislative review of 15A NCAC 03L .0210).*

15A NCAC 18A .0173 is proposed for readoption with substantive changes as follows:

15A NCAC 18A .0173 REPACKING

(a) Crustacea meat for repacking ~~which-that~~ is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking ~~which-that~~ is processed outside of North Carolina shall comply with Rule .0182 of this Section. ~~Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.~~

(b) The repacker shall provide the Division of Marine Fisheries a current written list of all sources of crustacea meat used for repacking.

(c) Repacking of crustacea meat:

- (1) Crustacea meat shall not exceed ~~45° F (7.1° C)~~ 40° F (4.4° C) during the repacking process.
- (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
- (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on ~~30-minute~~ 30-minute intervals during repacking.
- (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
- (5) Blending or combining of any of the following shall be prohibited:
 - (A) ~~Fresh~~ fresh crustacea meat.
 - (B) ~~Frozen~~ frozen crustacea meat.
 - (C) ~~Pasteurized~~ pasteurized crustacea meat.
 - (D) ~~Crustacea~~ crustacea meat packed in another facility.
- (6) Crustacea meat shall not be repacked more than one time.
- (7) All empty containers shall be rendered unusable.

(d) Labeling of repacked crustacea meat:

- (1) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's or the distributor's name and address.
- (2) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's certification number followed by the letters "RP."
- (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
- (4) Each container shall be sealed so that tampering can be detected.
- (5) Each container of foreign crustacea meat which has been repacked outside of North Carolina shall be labeled in accordance with Federal labeling requirements.

(e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~
Eff. October 1, 1992;
Amended Eff. August 1, 2002; April 1, 1997;
Readopted Eff. (Pending legislative review of 15A NCAC 03L .0210).*



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Oct. 22, 2021

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per G.S. 150B-21.3A. Request the MFC vote on final approval of readoption and amendment of 56 rules in the 2021-2022 "Package A".

Findings

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022 for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024 for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- Regarding the 56 rules in "Package A", one public comment was received about 15A NCAC 03M .0519, Shad.
- At its November meeting, the MFC is scheduled to receive an update about and vote on final approval of readoption and amendment of 56 rules in 15A NCAC 03 and 18A in accordance with G.S. 150B-21.3A.
- If approved, the rules have an intended effective date of April 1, 2022, except for rules subject to legislative review per Session Law 2019-198.

Action Needed

In accordance with G.S. 150B-21.3A, the MFC is scheduled to vote on final approval of readoption and amendment of 56 rules in 15A NCAC 03 and 18A as published in the *N.C. Register* Aug. 2, 2021, except for additional technical changes recommended to a portion of the rules in 15A NCAC 03I, 03J, and 18A.

Recommendation

The Division of Marine Fisheries (DMF) recommends the MFC vote on final approval of readoption and amendment of 56 rules in 15A NCAC 03 and 18A in accordance with G.S. 150B-21.3A. For more information, please refer to the rulemaking section of the briefing materials.

2020-2021 Rulemaking Cycle Update

At its August 2020 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for the 50 rules in "Package B". The MFC gave final approval of 41 of the rules at its February 2021 meeting and all but three shellfish lease rules became effective May 1, 2021; those three rules are automatically subject to legislative review in 2022. The MFC gave final approval of the remaining nine rules for the subject "General Regulations: Joint" at its September 2021 special meeting and the rules are pending review by the Rules Review Commission.

2021-2022 Rulemaking Cycle

"Package A" (56 rules)

Periodic Review and Expiration of Existing Rules – Vote on Final Approval of Readoption

At its May 2021 business meeting, the MFC approved Notice of Text for readoption and amendment of the 56 rules in "Package A". These rules cover the following subjects:

- Rules in 15A NCAC 03I, 03J (11 rules);
- Interjurisdictional species (8 rules);
- Rules with minor changes relating to standards for handling, packing, and shipping crustacea meat (34 rules); and
- Prohibit repacking of foreign crab meat in North Carolina (3 rules).

A summary of the proposed rules by subject is provided below. On Aug. 2, 2021 a news release was issued and the proposed rules were published in the *N.C. Register*. The MFC accepted public comments on the proposed rules from Aug. 2 through 5 p.m. Oct. 1, 2021. One written public comment was received about one interjurisdictional species rule, described with the corresponding subject below. An online public hearing was held via WebEx on Aug. 18, 2021 at 6 p.m.; no members of the public were in attendance. The MFC is scheduled to vote at its November 2021 business meeting on final approval of the rules in accordance with G.S. 150B-21.3A.

For more information, please refer to the documents for "Package A" in the rulemaking section of the briefing materials, including a table showing the timing of the steps in the process, the Aug. 2, 2021 *N.C. Register* publication of the proposed rules, a summary of the public hearing, and the written comment received. Additional technical changes recommended to a portion of the rules in 15A NCAC 03I, 03J, and 18A are also provided for the MFC's final approval, described with the corresponding subjects below. The fiscal analyses for the proposed rules are available on the division website at <https://deq.nc.gov/mfc-proposed-rules> (click on 2021-2022 "Package A").

The intended effective date of the rule package is April 1, 2022. Rules with an asterisk (*) are subject to legislative review pursuant to Session Law 2019-198 and G.S. 14-4.1, Legislative review of regulatory crimes, and thus are expected to have a delayed effective date. The MFC may request a group of related rules to become effective at the same time per G.S. 150B-21.3.

RULES IN 15A NCAC 03I, 03J (11 rules)

The MFC is scheduled to vote on final approval to readopt 15A NCAC 03I .0108, .0115, .0122, 03J .0103*, .0104*, .0106*, .0111*, .0202*, .0208*, .0401, and .0402* pursuant to the requirements of G.S. 150B-21.3A. The proposed rules were published with no changes; however, revised versions of the rules with minor technical and conforming changes are included for the MFC's consideration for final approval. There is no change to management proposed and no impacts to stakeholders are expected.

INTERJURISDICTIONAL SPECIES (8 rules)

The MFC is scheduled to vote on final approval to readopt and repeal through readoption 15A NCAC 03L .0207, .0301*, .0302, 03M .0301, .0302*, .0511, .0516, and .0519* pursuant to the requirements of G.S. 150B-21.3A. The management and harvest restrictions of North Carolina's interjurisdictional species are implemented through a state fishery management plan and MFC rules that coordinate with relevant interstate and federal regulatory bodies. Since fish are not contained within political boundaries, state, interstate, federal, and even international authorities share fisheries management responsibilities. Over time, regulation of these species in North Carolina has shifted towards ongoing proclamations and rule suspensions by the DMF director in order to keep pace with shifting interstate and federal regulations. The state is required by the Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Act to comply with interstate and federal restrictions.

The proposed amendments and repeals through readoption seek to formalize proclamation authority of these interjurisdictional species in rule language and remove existing harvest requirements that are likely to become out of compliance. The proposed changes would conform with existing management practices by the DMF and would increase the DMF's efficiency in managing these species.

One written public comment was received about 15A NCAC 03M .0519 (Shad) from the Wildlife Resources Commission regarding the proposed changes to remove the season and bag limit for shad from the rule and set requirements via proclamation authority. These portions of the shad rule continue to be suspended in order to comply with requirements of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Shad and River Herring Amendment 3 and the N.C. American Shad Sustainable Fishery Plan. The season and bag limit in the rule are out of compliance and are expected to continue changing, so they need to be removed from the rule to help minimize confusion by stakeholders.

RULES WITH MINOR CHANGES RELATING TO STANDARDS FOR HANDLING, PACKING, AND SHIPPING CRUSTACEA MEAT (34 rules)

The MFC is scheduled to vote on final approval to readopt 15A NCAC 18A .0134, .0137-.0139, .0144, .0145, .0147-.0149, .0151-.0153, .0156-.0158, .0161, .0162, .0164-.0166, .0168, .0174-.0178, .0181-.0187, and .0191 pursuant to the requirements of G.S. 150B-21.3A. The proposed readoptions consist of amendments that are of an administrative nature to update the rules. All proposed changes are either intended to provide heightened clarity to rule language, or to conform rule language for crustacea meat storage, processing, and facility maintenance to that of ongoing practice by the DMF staff and licensed seafood processors and dealers. The proposed changes would not affect the operations or material needs of the DMF or outside stakeholders. Revised versions of 15A NCAC 18A .0134 and .0153 are included for the MFC's consideration for final approval with minor technical changes to conform the rules to forthcoming amendments to the other rules in that Subchapter for readoption so all rules use consistent terminology.

PROHIBIT REPACKING OF FOREIGN CRAB MEAT IN NORTH CAROLINA (3 rules)

The MFC is scheduled to vote on final approval to readopt 15A NCAC 18A .0136 and .0173 pursuant to the requirements of G.S. 150B-21.3A and adopt 15A NCAC 03L .0210*. Following recent developments in North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the MFC requested the DMF develop rules to prohibit the repacking of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward. After investigating its statutory authority over the issue, the DMF prepared a

new rule for adoption that prohibits the repacking of foreign crab meat in North Carolina into another container. This does not affect value-added crab products, such as crab cakes. The two existing rules for readoption in 15A NCAC 18A are proposed with conforming changes to address the new repacking rule. A separate rule is under development to require additional labeling requirements for repacked foreign crab meat in North Carolina and is scheduled to be included in the MFC's 2022-2023 Rulemaking Cycle.

"Package B" (109 rules)

Periodic Review and Expiration of Existing Rules – Update

At its August 2021 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 109 rules. These rules cover the following subjects:

- Highly efficient gears, artificial reefs, and research sanctuaries (3 rules);
- Shellfish leasing regulations (9 rules);
- 15A NCAC 03 rules with conforming changes (40 rules);
- 15A NCAC 03I, 03J, 03K, 03O, and 03R for definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses (18 rules);
- Commercial blue crab harvest and gear regulations (8 rules);
- Permit and license suspensions and revocations and pound net gears (11 rules);
- 15A NCAC 03P administrative procedures (8 rules); and
- 15A NCAC 03K and 18A crustacea and shellfish (12 rules).

On Oct. 1, 2021 a news release was issued and the proposed rules were published in the *N.C. Register*. The MFC is accepting public comments on the proposed rules from Oct. 1 through 5 p.m. Nov. 30, 2021. Public comments on the proposed rules may be submitted by an online form available at <https://deq.nc.gov/mfc-proposed-rules> (click on 2021-2022 "Package B"). or by U.S. mail to DMF Rules Coordinator Catherine Blum, P.O. Box 769, Morehead City, NC 28557. An online public hearing was held via WebEx on Oct. 27, 2021, at 6 p.m.; no members of the public attended. The proposed rules and the corresponding fiscal analyses are also available on the website. The MFC will receive an update on the public comments at its November 2021 business meeting. The intended effective date of the rule package is May 1, 2022. Please refer to the documents for "Package B" in the rulemaking section of the briefing materials, including a table showing the timing of the steps in the process and the Oct. 1 news release and *N.C. Register* publication of the proposed rules.

2022-2023 Rulemaking Cycle Preview

Division staff will provide a preview of potential rules in the MFC's 2022-2023 annual rulemaking cycle at its November 2021 business meeting, including development of an issue paper for the mutilated finfish rule (15A NCAC 03M .0101). Additional rules in 15A NCAC 18A proposed for readoption are also expected to be part of the rulemaking cycle. Please see Figure 1, detailed in the Background Information section below, that shows the MFC's rule readoption schedule.

Background Information

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

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

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

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Readopted	Rule Readoption (116)	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	Rule Readoption (42)	Rule Readoption (80)	6/30/24 deadline	

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

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

November 2021

Time of Year	Action
February-April 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 20, 2021	MFC approved Notice of Text for Rulemaking
Aug. 2, 2021	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 2-Oct. 1, 2021	Public comment period held
Aug. 18, 2021	Public hearing held via WebEx
November 2021	MFC votes on approval of permanent rules
January 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
2022 legislative session	Possible effective date of 13 of 56 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
April 1, 2022	Proposed effective date of 43 rules not subject to legislative review
April 1, 2022	Rulebook supplement available online
June 30, 2022	Readoption deadline for 15A NCAC 03
June 30, 2024	Readoption deadline for 15A NCAC 18A

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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 2021 – December 2021

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
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
35:20	04/15/21	03/24/21	04/30/21	06/14/21	06/21/21	07/15/21	08/01/21	01/10/22
35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
35:23	06/01/21	05/10/21	06/16/21	08/02/21	08/20/21	09/16/21	10/01/21	02/26/22
35:24	06/15/21	05/24/21	06/30/21	08/16/21	08/20/21	09/16/21	10/01/21	03/12/22
36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
36:03	08/02/21	07/12/21	08/17/21	10/01/21	10/20/21	11/18/21	12/01/21	04/29/22
36:04	08/16/21	07/26/21	08/31/21	10/15/21	10/20/21	11/18/21	12/01/21	05/13/22
36:05	09/01/21	08/11/21	09/16/21	11/01/21	11/22/21	12/16/21	01/01/22	05/29/22
36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
36:10	11/15/21	10/22/21	11/30/21	01/14/22	01/20/22	02/17/22	03/01/22	08/12/22
36:11	12/01/21	11/05/21	12/16/21	01/31/22	02/21/22	03/17/22	04/01/22	08/28/22
36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

(c) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct during the period between the failure to qualify and the expiration of his or her permit.

(d) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

(e) During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from requalifying, the Board may extend the deadline for requalification up to 60 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 60th day if requalification requirements have not been met.

Authority G.S. 74C-5; 74C-8.1(a); 74C-13.

SECTION .1200 – CONTINUING EDUCATION

14B NCAC 16 .1202 REQUIRED CONTINUING EDUCATION HOURS

(a) Each licensee shall complete 12 credit hours of continuing education training during each two year renewal period.

(b) Credit shall be given only for classes that have been approved by the Board as set forth in Rule .1203 of this Section.

(c) A licensee who attends a complete meeting of a regularly scheduled meeting of the Board shall receive two credit hours for each meeting that the licensee attends, with credit being given for a maximum of two meetings per year with no more than four credit hours per year and eight credit hours per renewal period.

(d) No more than six hours of CEU credit shall be given during a renewal period for online courses. However, during a national or State declared state of emergency that restricts or prohibits a licensee from attending live continuing education courses or a meeting of the Board, all required hours may be obtained online and credit shall be given upon written request to the Director.

(e) No course offering CEU credits may be taken for credit more than one time during a renewal period.

Authority G.S. 74C-2; 74C-5; 74C-22.

14B NCAC 16 .1203 ACCREDITATION STANDARDS

(a) CE courses may obtain the approval of the Board by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;
- (3) the outline of the course, including the number of training hours for each segment; and
- (4) the name of the instructor.

(b) To determine if a course will receive approval from the Board, the Board shall complete the following review:

- (1) The matter shall be referred to the Training and Education Committee for the appointment of a

sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.

(2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.

(3) When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives and goals. The Training and Education Committee shall then report the findings with a recommendation of acceptance or denial to the Private Protective Services Board.

(c) Upon receipt of the Training and Education Committee report, the Private Protective Services Board shall determine by majority vote if the course will be approved for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.

(d) Each approved course shall remain an approved course for four years from the date of approval by the Board, unless the course content changes or the course instructor changes.

(e) Trainers and instructors shall receive continuing education credit of five hours for every actual teaching hour with an eight hour cap of continuing education credit every two years.

(f) Colleges, universities, trade schools, and other degree granting institutions shall be granted standing approval when the institutions are accredited, certified, or approved by the Department of Public Instruction or by a similar agency in another state and the course is related to law, criminal justice, security profession, finance, ethics, forensics, crime prevention, and investigation. Approval is one credit hour per contact hour not to exceed eight credit hours.

(g) Online courses shall be approved by the Board based on compliance with the standards set forth in Paragraph (a) of this Rule. ~~No more than six hours of CEU credit shall be given during a renewal period for online courses.~~

~~(h) No course offering CEU credits may be taken for credit more than one time during a renewal period.~~

Authority G.S. 74C-5; 74C-22.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03L .0210, readopt with substantive changes the rules cited as 15A NCAC 03L .0207, .0301, .0302; 03M .0302, .0519; 18A .0134, .0136-.0139, .0144,

.0145, .0147-.0149, .0151-.0153, .0156-.0158, .0161, .0162, .0164-.0166, .0168, .0173-.0178, .0181-.0187, .0191, readopt without substantive changes the rules cited as 15A NCAC 03I .0108, .0115, .0122; 03J .0103, .0104, .0106, .0111, .0202, .0208, .0401, .0402, and repeal through re Adoption the rules cited as 15A NCAC 03M .0301, .0511, and .0516.

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

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

Proposed Effective Date: April 1, 2022 except: 15A NCAC 03J .0103, .0104, .0106, .0111, .0202, .0208, .0402; 03L .0210, .0301; 03M .0302, .0519 – Pending Legislative Review

Public Hearing:

Date: August 18, 2021

Time: 6:00 p.m.

Location:

WebEx Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=eda06363d0c775c9de22e7ff40585bbeb>

Event number: 161 284 4183

Event password: 1234

Event phone number: 1-415-655-0003

Reason for Proposed Action:

15A NCAC 03I .0108 OCEAN FISHING PIERS
 15A NCAC 03I .0115 REPLACEMENT COSTS OF
 MARINE AND ESTUARINE RESOURCES - FISH
 15A NCAC 03I .0122 USER CONFLICT RESOLUTION
 15A NCAC 03J .0103 GILL NETS, SEINES,
 IDENTIFICATION, RESTRICTIONS
 15A NCAC 03J .0104 TRAWL NETS
 15A NCAC 03J .0106 CHANNEL NETS
 15A NCAC 03J .0111 FYKE OR HOOP NETS
 15A NCAC 03J .0202 ATLANTIC OCEAN
 15A NCAC 03J .0208 NEW RIVER
 15A NCAC 03J .0401 FISHING GEAR
 15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS
 In accordance with G.S. 150B-21.3A, these general rules and gear rules are proposed for re Adoption with no changes.

15A NCAC 03L .0207 HORSESHOE CRABS
 15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN
 LOBSTER)
 15A NCAC 03L .0302 SPINY LOBSTER
 15A NCAC 03M .0301 SPANISH AND KING MACKEREL
 15A NCAC 03M .0302 PURSE GILL NET PROHIBITED
 15A NCAC 03M .0511 BLUEFISH
 15A NCAC 03M .0516 COBIA
 15A NCAC 03M .0519 SHAD

In accordance with G.S. 150B-21.3A, these rules are proposed for re Adoption and repeal through re Adoption. The management and harvest restrictions of North Carolina's interjurisdictional fishery

species are implemented through a state fishery management plan and Marine Fisheries Commission rules that coordinate with relevant interstate and federal regulatory bodies. Over time, regulation of these species in North Carolina has shifted towards ongoing proclamations and rule suspensions by the Fisheries Director in order to keep pace with shifting interstate and federal regulations. The proposed amendments and repeals through re Adoption seek to formalize proclamation authority of several interjurisdictional species in rule and remove existing harvest requirements that are likely to become out of date. The proposed changes would conform with existing management practices by the Division of Marine Fisheries and would increase the division's efficiency in managing these species.

15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED
 15A NCAC 18A .0136 APPLICABILITY OF RULES
 15A NCAC 18A .0173 REPACKING

In accordance with G.S. 150B-21.3A and following recent developments in North Carolina where foreign crab meat was fraudulently marketed and sold as domestic blue crab, the Marine Fisheries Commission developed rules to prohibit the repacking of foreign crab meat in the state to prevent future fraud and improve consumer confidence moving forward. One rule is proposed for adoption (15A NCAC 03L .0210) that prohibits the repacking of foreign crab meat in North Carolina into another container. This does not affect value-added crab products, such as crab cakes. Two existing rules for re Adoption (15A NCAC 18A .0136, .0173) are proposed with changes to conform to the new repacking rule.

15A NCAC 18A .0134 DEFINITIONS
 15A NCAC 18A .0137 GENERAL REQUIREMENTS FOR OPERATION
 15A NCAC 18A .0138 SUPERVISION
 15A NCAC 18A .0139 FACILITY FLOODING
 15A NCAC 18A .0144 INSECT CONTROL
 15A NCAC 18A .0145 RODENT AND ANIMAL CONTROL
 15A NCAC 18A .0147 WATER SUPPLY
 15A NCAC 18A .0148 ICE
 15A NCAC 18A .0149 PLUMBING
 15A NCAC 18A .0151 TOILETS
 15A NCAC 18A .0152 SOLID WASTE
 15A NCAC 18A .0153 PERSONAL HYGIENE
 15A NCAC 18A .0156 EQUIPMENT AND UTENSIL CONSTRUCTION
 15A NCAC 18A .0157 FACILITY AND EQUIPMENT SANITATION
 15A NCAC 18A .0158 EQUIPMENT STORAGE
 15A NCAC 18A .0161 CRUSTACEA COOKING
 15A NCAC 18A .0162 COOKED CRUSTACEA AIR-COOL
 15A NCAC 18A .0164 COOKED CRUSTACEA PICKING
 15A NCAC 18A .0165 PACKING
 15A NCAC 18A .0166 PICKED CRUSTACEA MEAT REFRIGERATION
 15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS
 15A NCAC 18A .0174 PASTEURIZATION PROCESS CONTROLS-THERMOMETERS

PROPOSED RULES

- 15A NCAC 18A .0175 PREPARATION OF CRUSTACEA MEAT FOR PASTEURIZATION
- 15A NCAC 18A .0176 PASTEURIZATION OF CRUSTACEA MEAT
- 15A NCAC 18A .0177 LABELING OF PASTEURIZED CRUSTACEA MEAT
- 15A NCAC 18A .0178 INTERFACILITY PASTEURIZATION PROCEDURES
- 15A NCAC 18A .0181 EMBARGO OR DISPOSAL OF COOKED CRUSTACEA OR CRUSTACEA MEAT
- 15A NCAC 18A .0182 BACTERIOLOGICAL AND CONTAMINATION STANDARDS
- 15A NCAC 18A .0183 ALTERNATIVE LABELING
- 15A NCAC 18A .0184 THERMAL PROCESSING CONTROLS-THERMOMETERS
- 15A NCAC 18A .0185 THERMAL PROCESSING OF CRUSTACEA AND CRUSTACEA MEAT
- 15A NCAC 18A .0186 LABELING OF THERMALLY PROCESSED CRUSTACEA OR CRUSTACEA MEAT
- 15A NCAC 18A .0187 INTERFACILITY THERMAL PROCESSING PROCEDURES
- 15A NCAC 18A .0191 MONITORING RECORDS

In accordance with G.S. 150B-21.3A, these rules that relate to standards for commercial crustacea meat sanitation and processing procedures are proposed for re-adoption. All proposed changes are either intended to provide heightened clarity to rule language, or to conform rule language around crustacea meat storage, processing, and facility maintenance to that of ongoing practice by Division of Marine Fisheries staff and licensed seafood processors and dealers. The proposed re-adoptions also contain amendments that are of an administrative nature to update the rules. In all, the rules are proposed for re-adoption with no changes to division procedures.

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

Comment period ends: October 1, 2021

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.

Rules automatically subject to legislative review: 15A NCAC 03J .0103, .0104, .0106, .0111, .0202, .0208, .0402; 03L .0210, .0301; 03M .0302, .0519
 Statutory reference: S.L. 2019-198

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

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

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0108 OCEAN FISHING PIERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03I .0115 REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03I .0122 USER CONFLICT RESOLUTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0104 TRAWL NETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0106 CHANNEL NETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0111 FYKE OR HOOP NETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - NET RULES, SPECIFIC AREAS

15A NCAC 03J .0202 ATLANTIC OCEAN (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0208 NEW RIVER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0400 - FISHING GEAR

15A NCAC 03J .0401 FISHING GEAR (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03L – SHRIMPS, CRAB, AND LOBSTER

SECTION .0200 – CRABS

15A NCAC 03L .0207 HORSESHOE CRABS

(a) The annual (January through December) commercial quota for North Carolina for horseshoe crabs is established by the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab.

(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of horseshoe crabs to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab: Crab or to implement state management measures:

- (1) Specify season;
- (2) Specify areas;
- (3) Specify quantity;
- (4) Specify means and methods; and
- (5) Specify size.
- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

(c) ~~Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are subject to this Rule.~~

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

15A NCAC 03L .0210 REPACKING OF FOREIGN CRAB MEAT PROHIBITED

It shall be unlawful to repack foreign crab meat in North Carolina into another container. This Rule shall apply to all facilities and persons permitted in accordance with 15A NCAC 18A .0135. This Rule does not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.

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

SECTION .0300 – LOBSTER

15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

- (a) It ~~is~~ shall be unlawful to possess American lobster:
- (1) with a carapace less than 3 3/8 inches or greater than 5 1/4 inches;
 - (2)(1) which that has eggs or from which eggs have been artificially removed by any method;
 - (3)(2) meats, detached meats, detached tails or elaws claws, or any other part of a lobster that has been separated from the lobster;

- (4)(3) which that has an outer shell which has been speared; or
- (5)(4) that is a V-notched female lobster. A V-notched female lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. A V-notched female lobster is also any female lobster which that is mutilated in a manner which that would hide, ~~obscure~~ obscure, or obliterate such a ~~mark; or mark.~~ mark.
- (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.

~~(b) American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:~~

- (1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
- (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
- (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section;
- (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap; and
- (5) contains at least one rectangular escape vent per trap, 2 inches by 5 3/4 inches minimum size, or two circular escape vents per trap, with a minimum inside diameter of 2 5/8 inches.

(b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of American lobster to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for American Lobster or to implement state management measures:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

Authority G.S. 113-134; 113-182; ~~113-221;~~ 113-221.1; 143B-289.52.

15A NCAC 03L .0302 SPINY LOBSTER

It is unlawful to:

- (1) Possess an egg-bearing spiny lobster or a spiny lobster from which eggs have been stripped, scrubbed or removed;
- (2) Possess spiny lobster with a carapace length less than 3 inches;

- (3) Possess aboard a vessel or land more than two spiny lobsters per person;
- (4) Possess aboard a vessel or land detached spiny lobster tails; or
- (5) Take spiny lobsters with a gaff hook, spear or similar device. Possession of a speared, pierced, or punctured spiny lobster is prima facie evidence that prohibited gear was used.

The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of spiny lobster to maintain compliance with the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and the South Atlantic or to implement state management measures:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

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

SUBCHAPTER 03M - FINFISH

SECTION .0300 - SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) ~~Spanish Mackerel:~~

- (1) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
- (2) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.
- (3) It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.

(b) ~~King mackerel:~~

- (1) It is unlawful to possess king mackerel less than 24 inches fork length.
- (2) It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.
- (3) It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:
 - (A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or
 - (B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service

~~King Mackerel Commercial Vessel Permit.~~

- (4) It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).

(c) ~~Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the Spanish mackerel and king mackerel possession limits established in Subparagraphs (a)(2) and (b)(2) of this Rule when fishing with more than three persons (including the captain and mate) on board.~~

(d) ~~It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0302 PURSE GILL NET PROHIBITED

It is shall be unlawful to have a purse gill net on board a vessel when taking or landing Spanish or ~~King Mackerel~~ king mackerel.

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0511 BLUEFISH

It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0516 COBIA

- (a) It is unlawful to possess cobia less than 33 inches fork length.
- (b) It is unlawful to possess more than two cobia per person per day.

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

15A NCAC 03M .0519 SHAD

(a) It is unlawful to take American shad and hickory shad by any method except hook and line from April 15 through December 31.

(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook and line or for recreational purposes.

(c) It is shall be unlawful to take or possess American shad from the Atlantic Ocean.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0100 – HANDLING, PACKING, AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0134 DEFINITIONS

The following definitions shall apply ~~throughout~~ to this Section; however, nothing in this Section shall be construed as expanding or restricting the definitions in G.S. 106-129 and G.S. 106-130:

- (1) "Adulterated" as used in G.S. 106-129 means the following:
 - (a) ~~Any any~~ cooked crustacea or crustacea meat that does not comply with ~~these Rules; the rules in this Section;~~
 - (b) ~~Any any~~ cooked crustacea or crustacea meat ~~which that~~ exceeds the bacteriological standards in Rule .0182 of this Section; or
 - (c) ~~Any any~~ cooked crustacea or crustacea meat ~~which that~~ has been deemed to be an imminent ~~hazard; hazard.~~
- (2) "Code date" means the date conspicuously placed on the container to indicate the date that the product was packed.
- (3) "Cook" means to prepare or treat raw crustacea by heating.
- (4) "Critical control point" means a point, ~~step step,~~ or procedure in a food process at which a control can be ~~applied; applied~~ and a food safety hazard ~~can can,~~ as a ~~result result,~~ be prevented, ~~eliminated eliminated,~~ or reduced to acceptable levels.
- (5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological biological,~~ or chemical parameter ~~must shall~~ be controlled at a critical control point to prevent, ~~eliminate eliminate,~~ or reduce to an acceptable level the occurrence of the identified food safety hazard.
- (6) "Crustacea meat" means the meat of crabs, lobster, ~~shrimp shrimp,~~ or crayfish.
- (7) "Division" means the Division of ~~Environmental Health or its authorized agent.~~ Marine Fisheries.
- (8) "Easily cleanable" means a surface that is readily accessible and made of such materials, has a finish, and is so fabricated that residues may be effectively removed by normal cleaning methods.
- ~~(8)(9)~~ "Food-contact surface" means the parts of equipment, including auxiliary equipment, ~~which that~~ may be in contact with the food being processed, or ~~which that~~ may drain into the portion of equipment with which food is in contact.
- ~~(9)(10)~~ "Food safety hazard" means any biological, ~~chemical chemical,~~ or physical property that may cause a food to be unsafe for human consumption.
- ~~(10)(11)~~ "Foreign" means any place or location outside the United States.

- ~~(11)(12)~~ "Fresh crustacea" means a live, ~~raw raw,~~ or frozen raw crab, lobster, ~~shrimp shrimp,~~ or crayfish ~~which that~~ shows no decomposition.
- ~~(12)(13)~~ "HACCP plan" means a written document that delineates the formal procedures a dealer follows to implement food safety controls.
- ~~(13)(14)~~ "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control control,~~ and monitoring measures initiated by a dealer to identify microbiological, ~~chemical chemical,~~ or physical food safety hazards ~~which that~~ are likely to occur in shellfish products produced by the dealer.
- ~~(14)(15)~~ "Imminent hazard" means a situation ~~which that~~ is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious physical adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- ~~(15)(16)~~ "Internal temperature" means the temperature of the product as opposed to the ambient temperature.
- ~~(16)(17)~~ "Misbranded" as used in G.S. 106-130 means any container of cooked crustacea or crustacea meat ~~which that~~ is not labeled in compliance with ~~these Rules; the rules in this Section.~~
- (18) "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.
- ~~(17)(19)~~ "Operating season" means the season of the year during which a crustacea product is processed.
- ~~(18)(20)~~ "Pasteurization" means the process of heating every particle of crustacea meat in a hermetically-sealed ~~401 by 301 one pound~~ container to a temperature of at least ~~185°F (85°C)~~ 185° F (85° C) and holding it continuously at or above this temperature for at least one minute at the geometric center of a container in properly operated equipment, equipment being operated in compliance with the Process Validation Study Report. The term includes any other process ~~which that~~ has been found equally effective by the Division.
- ~~(19)(21)~~ "Pasteurization date" means a code conspicuously placed on the container to indicate the date that the product was pasteurized.
- (20) "~~Person~~" means ~~an individual, corporation, company, association, partnership, unit of government or other legal entity.~~
- (22) "Process Validation Study Report" means a report of tests that shows a piece of equipment can produce time-temperature results as required by the rules of this Section, and the procedures required to achieve such results.

- ~~(21)~~(23) "Processing" means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.
- ~~(22)~~(24) "Repacker" means a facility ~~which~~ that repacks cooked crustacea meat into other containers.
- ~~(23)~~(25) "Responsible person" means the individual present in a cooked crustacea facility who is the apparent supervisor of the cooked crustacea facility at the time of the inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (26) "Retort" means a pressure vessel used to cook raw crustacea.
- ~~(24)~~(27) "Sanitize" means a ~~baactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619, to treat food contact surfaces by a process that is effective in:~~
 - (a) destroying vegetative cells of microorganisms of public health significance;
 - (b) substantially reducing the numbers of other undesirable microorganisms; and
 - (c) not adversely affecting the product or its safety for the consumer.
- (25) "~~Standardization report~~" means a ~~report of tests which show that a piece of equipment can produce time/temperature results as required by these Rules.~~
- ~~(26)~~(28) "Thermal processing" means the heating of previously cooked crustacea or crustacea meat to a desired temperature for a specified time at the geometric center of a container in properly operated equipment. equipment being operated in compliance with the Process Validation Study Report.

Authority G.S. 106-129; 106-130; ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0136 APPLICABILITY OF RULES

The ~~Rules~~ rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, ~~transport~~ transport, or ship cooked crustacea or crustacea meat ~~which~~ that has not been transformed into another product. ~~Foreign crustacea meat processed in North Carolina shall comply with all applicable Federal requirements.~~

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

15A NCAC 18A .0137 GENERAL REQUIREMENTS FOR OPERATION

- (a) During the operating season the processing portion of the facility shall be used for no purpose other than the processing of cooked crustacea or crustacea meat.
- (b) Retail sales of cooked crustacea or crustacea meat shall not be made from any processing portion of the facility.
- (c) Accurate records of all purchases and sales of crustacea and crustacea meat shall be maintained for one year. The records shall be available for inspection by the ~~Division~~ Division of Marine Fisheries.

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

15A NCAC 18A .0138 SUPERVISION

- (a) The owner or responsible person shall supervise the processing operation and be responsible for compliance with the rules of this ~~Section~~ Section, including compliance with personal hygiene requirements as set forth in Rule .0153 of this Section.
- (b) No unauthorized persons shall be allowed in the facility during the periods of operation.
- ~~(c) The owner or responsible person shall observe employees daily to ensure compliance with Rule .0153 of this Section.~~

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

15A NCAC 18A .0139 FACILITY FLOODING

- (a) If the facility floors are flooded, processing shall be discontinued until flood waters have receded and the facility and equipment are cleaned and sanitized.
- (b) Any cooked crustacea or crustacea meat ~~which~~ that may have been contaminated by flood waters shall be deemed adulterated and disposed of in accordance with G.S. ~~130A-21(e)~~ 113-221.4 and Rule .0181 of this Section.

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

15A NCAC 18A .0144 INSECT CONTROL

All outside openings shall be screened, provided with wind ~~curtains~~ curtains, or be provided with other methods to eliminate the entrance of insects. All screens shall be kept in good repair. All outside doors shall open outward and shall be self-closing. The use and storage of pesticides shall comply with all applicable State and ~~Federal~~ federal laws and rules.

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

15A NCAC 18A .0145 RODENT AND ANIMAL CONTROL

Measures shall be taken by the owner or responsible person to keep animals, fowl, rodents, and other vermin out of the facility. The storage and use of rodenticides shall comply with all applicable State and ~~Federal~~ federal laws and rules.

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

15A NCAC 18A .0147 WATER SUPPLY

(a) The water supply used shall be in accordance with ~~15A NCAC 18A .1700.~~ 15A NCAC 18A .1720 through .1728.

~~(b) A cooked crustacea facility using a non-community water supply shall be listed with the Public Water Supply Section, Division of Environmental Health.~~

~~(c)~~ (b) Water samples for bacteriological analysis shall be collected at least annually by the Division of Marine Fisheries and submitted to ~~the Laboratory Division of the Department or another~~ a laboratory certified by the Department for potable water testing in the State of North Carolina for analysis.

~~(d)~~ (c) Cross-connections with unapproved water supplies are prohibited. Hot and cold running water under pressure shall be provided to food preparation, ~~utensils~~ utensils, and handwashing areas and any other areas in which water is required for cleaning. Running water under pressure shall be provided in sufficient quantity to carry out all food preparation, utensil washing, hand washing, ~~cleaning~~ cleaning, and other water-using operations.

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

15A NCAC 18A .0148 ICE

(a) Ice shall be obtained from a water supply approved by the Division of Marine Fisheries pursuant to Rule .0147 of this Section and shall be stored and handled ~~in accordance with these Rules.~~ in a manner to prevent contamination.

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

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

15A NCAC 18A .0149 PLUMBING

(a) Plumbing fixtures shall be located to facilitate the flow of processing activities and to prevent the splashing of water on food-contact surfaces or cooked crustacea and crustacea meat.

(b) Fixtures, ~~ducts~~ ducts, and pipes shall not be suspended over working areas.

(c) Handwash lavatories shall be located so that the supervisor can readily observe that employees wash and sanitize their hands before beginning work and after each interruption.

(d) Handwash lavatories shall be provided in the following locations:

- (1) ~~Packing~~ packing room or ~~area.~~ area;
- (2) ~~Toilet~~ toilet or lounge ~~area.~~ area; and
- (3) ~~Picking~~ picking room.

(e) At least one handwash lavatory shall be provided for every 20 employees among the first 100 employees and at least one handwash lavatory shall be provided for every 25 employees in excess of the first 100 employees.

(f) Additional lavatories required by Paragraph (e) of this Rule shall be located in the picking room.

(g) A container shall be located near each handwash lavatory in the picking room and packing room or area to sanitize hands in a

solution containing at least 100 parts per million (ppm) of available chlorine or other equally effective bactericide. A ~~suitable~~ suitable testing method or equipment approved by the Division of Marine Fisheries shall be available and ~~regularly~~ regularly used to test chemical sanitizers to ~~insure~~ ensure minimum prescribed strengths.

(h) Soap and single service towels in protected dispensers, or other approved hand drying devices, shall be available near the handwash lavatories.

(i) All pre-cool rooms, picking rooms, packing rooms or areas, and cooking areas shall be provided with ~~hose bibs~~ hose bibs and wash down hoses. Storage racks shall be provided to keep the hoses elevated off the floor when not in use.

(j) An automatically regulated hot-water system shall be provided to furnish a sufficient volume of hot water with a temperature of at least 130° F (54.5° C) to carry out all processing operations.

(k) All handwash lavatories and sinks shall be equipped with mixing faucets.

(l) A three-compartment sink with drainboards, large enough to wash the largest utensils used in the facility, shall be located in the picking room near the delivery shelf. One three-compartment sink, with drainboards, shall be provided for every 50 employees or fraction thereof.

(m) The floor drains in coolers shall not be connected directly to a sewer in processing or repacking facilities constructed after October 1, 1992.

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

15A NCAC 18A .0151 TOILETS

(a) Toilets shall be provided by the owner or responsible person in the facility; however, privies may be substituted for toilets when the conditions in Paragraph (d) of this Rule are met. ~~facility.~~

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

(c) Toilet room doors shall not open directly into processing areas of the facility and shall be self-closing.

~~(d) Only privies that meet the requirements of Section 1900 of this Subchapter and that were in place at a processing or repacking facility prior to October 1, 1992 may be used at the facility after October 1, 1992.~~

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

15A NCAC 18A .0152 SOLID WASTE

(a) Cooked crustacea scrap and other putrescible wastes shall be removed from the premises at least daily. Other solid wastes shall be removed from the premises at least weekly.

(b) Scrap containers shall be removed from the picking room immediately after filling and placed in storage areas approved by the ~~Division.~~ Division of Marine Fisheries.

(c) Scrap containers shall be non-corrosive and cleaned at least daily.

(d) Scrap containers shall be cleaned in an area approved by the Division.

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

15A NCAC 18A .0153 PERSONAL HYGIENE

- (a) All employees shall wash their hands with soap and running water before beginning work and again after each interruption. Signs to this effect shall be posted in conspicuous places in the facility by the ~~owner~~, owner or responsible person.
- (b) All persons handling cooked crustacea or crustacea meat shall sanitize their hands before beginning work and again after each interruption.
- (c) All persons employed or engaged in the handling, ~~picking~~ picking, or packing of cooked crustacea or crustacea meat shall wear clean, washable outer clothing.
- (d) Employees shall not eat food, ~~drink nor~~ drink, or use tobacco in any form in the areas where cooked crustacea or crustacea meat are stored, ~~processed~~ processed, or handled.
- (e) Any person known to be a carrier of any disease which can be transmitted through the handling of cooked crustacea or crustacea meat or who has an infected wound or open lesion on any exposed portion of the body shall be prohibited from handling cooked crustacea or crustacea meat.
- (f) Hair restraints shall be worn by all employees who handle cooked crustacea or crustacea meat.
- (g) The arms of personnel who pick or pack cooked crustacea or crustacea meat shall be bare to the elbow or covered with an arm guard approved by the ~~Division~~, Division of Marine Fisheries.
- (h) Personnel who pick and pack cooked crustacea or crustacea meat shall have ~~clean~~ clean, short ~~finger~~nails, fingernails free from nail polish and shall not wear jewelry other than easily cleanable rings. The use of absorbent wraps or absorbent finger cots shall not be permitted.

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

15A NCAC 18A .0156 EQUIPMENT AND UTENSIL CONSTRUCTION

All processing equipment and utensils shall be smooth, easily cleanable, ~~durable~~ durable, and kept in good repair. The food-contact surfaces of equipment, ~~utensils~~ utensils, and processing machinery shall be easily accessible for cleaning, non-toxic, non-corrosive, ~~non-absorbent~~ non-absorbent, and free of open seams.

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

15A NCAC 18A .0157 FACILITY AND EQUIPMENT SANITATION

- (a) The walls and floors in the picking and packing areas shall be kept clean while operating and shall be sanitized at least daily and whenever there is evidence of contamination.
- (b) All food-contact surfaces shall be washed, ~~rinsed~~ rinsed, and sanitized prior to starting operation each day and whenever there is evidence of contamination.
- (c) Reusable picking containers and knives shall be washed, ~~rinsed~~ rinsed, and sanitized each time crustacea meat is delivered to the packing room.

(d) Sanitizing methods ~~are~~ shall be as follows:

- (1) ~~By~~ by steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, ~~by~~ with exposure to a temperature of 170° F (77° C) for at least 15 minutes or to a temperature of 200° F (93° C) for at least five minutes.
- (2) ~~By~~ by immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170° F (77° C). A thermometer accurate to ~~32° F~~ 3° F (1.5° C) shall be available to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170° F (77° C) in the third compartment at all times when utensils are being washed shall be provided. The heating device may be integral with the immersion compartment.
- (3) ~~By~~ by immersion for at least one minute in, or exposure for at least one minute to a constant flow of, a solution containing not less than 100 ppm chlorine residual. Utensils and equipment ~~which~~ that have to be washed in place will require washing, ~~rinsing~~ rinsing, and sanitizing.
- (4) ~~By~~ by other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing solutions" ~~from the "Food Service Sanitation Manual" published by the U.S. Food and Drug Administration. 21 CFR 178.1010 solutions~~, which is hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection, and copies may be obtained at no cost, at the Shellfish Sanitation Branch, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina 28557. A copy of the reference material can be found at~~ https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=17d119b223f9451322279713caa2e6ab&ty=HTML&h=L&mc=true&n=pt21.3.178&r=PART#se21.3.178_1010, at no cost. A suitable Division of Marine Fisheries approved testing method or equipment shall be available and regularly used to test chemical sanitizers to ~~insure~~ ensure minimum prescribed strengths.

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

15A NCAC 18A .0158 EQUIPMENT STORAGE

Equipment and utensils that have been cleaned and sanitized shall be stored in a manner to protect against contamination.

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

15A NCAC 18A .0161 CRUSTACEA COOKING

(a) The cooking area or room shall be under a roof located between the area for receiving raw crustacea and the air-cool room and shall be vented to assure the removal of steam.

(b) Crustacea shall be cooked in accordance with the following:

- (1) Crabs shall be cooked under steam pressure until the internal temperature of the center-most crab reaches 235° F (112.8° C). Temperature shall be measured with an accurate, indicating thermometer having a range of 170-270° F (77-132° C).
(2) Other crustacea shall be cooked until the internal temperature of the center-most crustacean reaches 180° F (83° C) and is held at this temperature for one minute. Temperature shall be measured with an accurate, indicating thermometer. Crayfish shall be culled and cleaned prior to cooking.
(3) Nothing in this Rule shall prohibit any other cooking process which that has been found equally effective and approved by the Division. Division of Marine Fisheries.

(c) The retort shall be constructed to permit a working pressure of at least 20 pounds per square inch (psig). Steam inlet and venting shall provide a uniform and complete distribution of steam. Venting shall be sufficient to permit complete elimination of air from the retort. Drains and vents shall be located at least two feet above mean high tide.

(d) The retorts shall be equipped with:

- (1) An an accurate, indicating thermometer with a range that will include 170-270° F (77-132° C) and located with the sensor extending into the heat chamber. chamber;
(2) An an operating pressure indicator, at least three inches in diameter, with a 0-30 psig range and located adjacent to the indicating thermometer. thermometer; and
(3) A a safety valve operational at 18-30 psig, located in the upper portion of the retort, protected from tampering tampering, and designed to prevent injury to the operator.

(e) The boiler shall be of such capacity as to maintain 45 to 100 psig during cooking. The steam line from the boiler to the retort shall be at least one and one-fourth inch inside diameter.

(f) Overhead hoists shall be equipped with chain bags or other means of preventing foreign material from falling onto the cooked product.

(g) Retort cooking baskets shall be of stainless steel or equally impervious, non-corrosive non-corrosive, and durable material, and shall be designed to allow for equal steam disbursement, ease of handling, dumping dumping, and cleaning.

(h) All construction or replacement of retorts after October 1, 1992 shall be "flow-through" type and opening open directly into the air-cool room or a protected passageway into the air-cool room.

(i) All construction of new or replacement retorts shall require a Process Validation Study Report approved by the Division prior to use.

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

15A NCAC 18A .0162 COOKED CRUSTACEA AIR-COOL

(a) Cooked crustacea, after removal from the retort, shall be moved immediately to the cooked crustacea air-cool air-cool area to be air cooled to ambient temperature without being disturbed. Cooked crustacea shall be stored in the original cooking basket.

(b) The construction and arrangement of the air-cool room shall be designed to provide protection from contamination of the cooked crustacea. The air-cool room shall open directly into the cooked crustacea cooler or other protected area.

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

15A NCAC 18A .0164 COOKED CRUSTACEA PICKING

(a) The picking operation shall be conducted in a manner to prevent contamination.

(b) All cooked crustacea shall be picked before a new supply is delivered to the picking table.

(c) Picked crustacea meat shall be delivered to the packing room at least every 90 minutes or upon the accumulation of five pounds per picker picker, whichever is sooner.

(d) Paper towels used at the picking table shall be discarded after initial use.

(e) If provided, bactericidal solutions at picking tables shall be maintained at 100 ppm chlorine solution or an equivalent bactericidal solution. A testing method or equipment approved by the Division of Marine Fisheries to insure ensure minimum prescribed strengths shall be available and used to test chemical sanitizers.

(f) Handles of picking knives shall not be covered with any material.

(g) Crustacea shall be cooked and picked in the same permitted facility unless a written plan for interfacility shipment has been filed with the Division. The plan shall address and be approved based upon on the following:

- (1) time temperature; time-temperature requirements;
(2) shipping destination; shipping destination;
(3) handling;
(4) labeling;
(5) records;
(6) processing;
(7) sanitation; and
(8) HACCP plan.

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

15A NCAC 18A .0165 PACKING

(a) Crustacea meat shall be packed in a container, container and iced and cooled to an internal temperature of 40° F (4.4° C) or below within two hours of receipt in the packing room.

(b) The storage of ice in the packing room shall be in an easily cleanable, non-corrosive, non-toxic container.

(c) Blending or combining of any of the following shall be prohibited:

- (1) ~~Fresh~~ fresh crustacea ~~meat.~~ meat;
- (2) ~~Frozen~~ frozen crustacea ~~meat.~~ meat;
- (3) ~~Pasteurized~~ pasteurized crustacea ~~meat.~~ meat; and
- (4) ~~Crustacea~~ crustacea meat packed in another facility.

(d) Clean shipping containers shall be provided by the owner or responsible person for storing and shipping of packed crustacea meat.

(e) The return of overage of crustacea meat to a picker shall be prohibited.

(f) Washing of picked crustacea meat shall be under running potable water. The crustacea meat shall be ~~thoroughly~~ drained prior to packing.

(g) Any substance added to cooked crustacea or crustacea meat shall be approved and labeled according to ~~Federal~~ federal and State rules and regulations.

(h) Only those individuals responsible for packing the crustacea or crustacea meat shall be allowed in the packing room or area.

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

15A NCAC 18A .0166 PICKED CRUSTACEA MEAT REFRIGERATION

(a) The refrigeration room or ice box shall be of sufficient size so that a full day's production, with ice, can be ~~properly~~ stored in a sanitary manner and shall be equipped with an accurate, operating thermometer.

(b) Ice boxes shall be easily cleanable, non-corrosive, and non-toxic with an impervious lining and a drain.

(c) Picked crustacea meat shall be stored ~~between 33° F (0.5° C) and 40° F (4.4° C).~~ at 40° F (4.4° C) or below.

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

15A NCAC 18A .0168 SINGLE-SERVICE CONTAINERS

(a) Single-service containers used for packing or repacking cooked crustacea and crustacea meat shall be made from ~~food-safe~~ food-safe materials approved by the United States Food and Drug Administration.

(b) Containers shall not be reused for packing or repacking cooked crustacea and crustacea meat.

(c) No person shall use containers bearing a permit number other than the number assigned to the facility.

(d) Each container or lid shall be legibly impressed, ~~embossed~~ embossed, or lithographed with the name and address of the original packer, ~~repacker~~ repacker, or distributor. The original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, ~~embossed~~ embossed, or lithographed on each container or lid.

(e) Each container or lid shall be permanently and legibly identified with a code date.

(f) All containers and lids shall be stored and handled ~~in accordance with these Rules,~~ in a manner to prevent

contamination, sanitized by a procedure as stated in Rule .0157 of this ~~Section~~ Section, and drained prior to filling.

(g) All containers shall be sealed so that tampering can be detected. The words "Sealed For Your Protection" or equivalent shall be prominently displayed on the container or lid.

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

15A NCAC 18A .0173 REPACKING

(a) Crustacea meat for repacking ~~which that~~ is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking ~~which that~~ is processed outside of North Carolina shall comply with Rule .0182 of this Section. ~~Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.~~

(b) The repacker shall provide the Division of Marine Fisheries a current written list of all sources of crustacea meat used for repacking.

(c) Repacking of crustacea meat:

- (1) Crustacea meat shall not exceed ~~45° F (7.1° C)~~ 40° F (4.4° C) during the repacking process.
- (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
- (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on ~~30 minute~~ 30-minute intervals during repacking.
- (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
- (5) Blending or combining of any of the following shall be prohibited:
 - (A) ~~Fresh~~ fresh crustacea meat.
 - (B) ~~Frozen~~ frozen crustacea meat.
 - (C) ~~Pasteurized~~ pasteurized crustacea meat.
 - (D) ~~Crustacea~~ crustacea meat packed in another facility.
- (6) Crustacea meat shall not be repacked more than one time.
- (7) All empty containers shall be rendered unusable.

(d) Labeling of repacked crustacea meat:

- (1) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's or the distributor's name and address.
- (2) Each container shall be legibly embossed, ~~impressed~~ impressed, or lithographed with the repacker's certification number followed by the letters "RP."
- (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
- (4) Each container shall be sealed so that tampering can be detected.
- (5) Each container of foreign crustacea meat ~~which that~~ has been repacked outside of North

Carolina shall be labeled in accordance with ~~Federal~~ federal labeling requirements.

(e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

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

15A NCAC 18A .0174 PASTEURIZATION PROCESS CONTROLS - THERMOMETERS

(a) All pasteurizing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the water bath. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.

(b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the pasteurizing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.

(c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).

(d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.

(e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.

(f) The pasteurization unit shall not be operated without a recording thermometer chart in place, the pen in contact with the ~~chart~~ chart, and an inked record being made of the operating time-temperature cycle. ~~Any indication of falsification of a thermometer chart shall constitute a violation. Falsification of a thermometer chart shall not occur.~~ A permanent file of the used thermometer charts shall be maintained by the pasteurizer and kept available for inspection by the Division of Marine Fisheries for a period of one year. The following information shall be recorded within the confines of the pen markings after the pasteurization cycle has been completed:

- (1) ~~Date~~ date of pasteurization.
- (2) ~~Quantity~~ quantity of each batch pasteurized (pounds of crustacea meat or number and size of containers).
- (3) ~~Processor's~~ processor's code of each pack.
- (4) ~~If~~ if the pasteurizer processes crustacea meat for someone else, then the packer's name, ~~address~~ address, and permit number ~~must~~ shall be

recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat.

(5) ~~Notation~~ notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the pasteurizing cycle.

(6) ~~After~~ after the optimum temperature in the water bath has been reached and during the holding time, the reading of the indicating thermometer and the time of reading shall be recorded on the chart.

(7) ~~Signature~~ signature of the pasteurizer operator.

(g) A constant flow steam control valve is required, if steam is used as a source of heat.

(h) The water bath shall be provided with effective agitation to maintain a uniform temperature.

(i) Other technologies that provide the data, ~~information~~ information, and records as required in this Rule may be used if approved by the Division.

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

15A NCAC 18A .0175 PREPARATION OF CRUSTACEA MEAT FOR PASTEURIZATION

The preparation of crustacea meat for pasteurization shall be in compliance with the following:

(1) ~~Crustacea~~ crustacea meat shall be prepared in compliance with Rules .0134 through .0183 of this Section.

(2) ~~The~~ the containers of crustacea meat shall be sealed as quickly as possible after the crustacea meat is picked.

(3) ~~The~~ the sealed ~~container~~ containers of crustacea meat shall be placed immediately in ice and refrigerated until pasteurized.

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

15A NCAC 18A .0176 PASTEURIZATION OF CRUSTACEA MEAT

(a) All pasteurization operations shall require a Process Validation Study Report approved by the Division of Marine Fisheries prior to operation.

(b) The pasteurization of crustacea meat shall be conducted in compliance with the following: following procedures:

(1) ~~The~~ the minimum pasteurization specifications shall be ~~the raising of the internal temperature of the container~~ heating every particle of crustacea meat in a hermetically-sealed container to a temperature of at least 185° F (85° C) and holding it continuously at that or above this temperature for at least one minute at the geometric center of a container. ~~container in equipment being operated in compliance with the Process Validation Study Report. Each set of pasteurizing equipment shall be standardized so that the minimum~~

~~pasteurization procedure in this Subparagraph can be obtained. The pasteurization procedure shall be performed in accordance with the standardization report. This process~~ A copy of the procedures for operating the pasteurizing equipment shall also be posted adjacent to the pasteurization vat. The pasteurizer shall keep on file the standardization report on file and shall provide the Division a copy of such report.

- (2) ~~Alteration~~ alteration of the equipment or loading of containers shall require ~~the procedure be restandardized.~~ a new Process Validation Study Report.
- (3) ~~The~~ the containers of crustacea meat shall be cooled to 50° F (10° C) or below within three ~~hours.~~ hours of the completion of pasteurization.
- (4) ~~Refrigerated~~ refrigerated storage shall be provided for the cooled crustacea meat and shall maintain a storage temperature at or below 36° F (2.2° C); 38° F (3.3° C).

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

15A NCAC 18A .0177 LABELING OF PASTEURIZED CRUSTACEA MEAT

Labeling of pasteurized crustacea meat shall be in compliance with the following:

- (1) ~~The~~ the label used shall clearly identify the contents of the container as pasteurized crustacea meat.
- (2) ~~Each~~ each container shall be permanently and legibly identified with a code indicating the batch and day of processing.
- (3) ~~The~~ the words "Perishable-Keep Under Refrigeration", ~~or equivalent,~~ Refrigeration" or equivalent shall be prominently displayed on the container.
- (4) ~~The~~ the original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, ~~embossed~~ embossed, or lithographed on each container. Each container shall be legibly impressed, ~~embossed~~ embossed, or lithographed with the name and address of the original packer, ~~repacker~~ repacker, or distributor.

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

15A NCAC 18A .0178 INTERFACILITY PASTEURIZATION PROCEDURES

No person shall initiate interfacility pasteurization of crustacea meat without prior written approval by the ~~Division.~~ Division of Marine Fisheries. Interfacility pasteurization of crustacea meat shall be in ~~conjunction~~ compliance with the following:

- (1) Crustacea crustacea meat shall be packed, ~~labeled~~ labeled, and refrigerated in compliance

with Rules .0134 through .0182 of this Section. Records shall be maintained to identify each batch of crustacea meat pasteurized.

- (2) Crustacea crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature ~~between 33° F (0.5° C) and of 40° F (4.4° C).~~ C) or below.
- (3) Crustacea crustacea meat shall be pasteurized in compliance with Rules .0175 through .0177 of this Section. The pasteurizer shall provide a copy of each pasteurization chart to the original packer.

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

15A NCAC 18A .0181 EMBARGO OR DISPOSAL OF COOKED CRUSTACEA OR CRUSTACEA MEAT

(a) When it has been determined by the Division of Marine Fisheries that cooked crustacea or crustacea meat have not been stored, transported, handled, cooked, picked, ~~packed~~ packed, or offered for sale in compliance with this Section, the cooked crustacea or crustacea meat shall be deemed adulterated.

(b) Cooked crustacea or crustacea meat ~~prepared for sale to the public~~ determined to be adulterated or ~~misbranded,~~ misbranded shall be subject to embargo or disposal by the Division in accordance with G.S. 113-221.4, 130A-21(c). ~~The Division may embargo, condemn, destroy or otherwise dispose of all cooked crustacea or crustacea meat found to be adulterated or misbranded.~~

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

15A NCAC 18A .0182 BACTERIOLOGICAL AND CONTAMINATION STANDARDS

(a) Cooked crustacea or crustacea meat shall not exceed Escherichia coli Most Probable Number (MPN) of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.

(b) Pasteurized crustacea meat shall contain no Escherichia coli or fecal coliform. Samples of pasteurized crustacea meat, taken within 24 hours of pasteurizing, shall not have a standard plate count of more than 3,000 per gram.

(c) Thermally processed crustacea or crustacea meat shall not exceed Escherichia coli MPN of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.

(d) Cooked crustacea or crustacea meat shall not be handled in a manner to make it an imminent hazard.

(e) Cooked crustacea or crustacea meat found not complying with the standards as ~~stated~~ set forth in Paragraph (a), (b), ~~(c),~~ or (d) of this Rule may be deemed adulterated by the ~~Division.~~ Division of Marine Fisheries.

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

15A NCAC 18A .0183 ALTERNATIVE LABELING

A durable label, permanently affixed to the ~~container~~ container, may be used to meet any labeling requirement in this Section.

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

15A NCAC 18A .0184 THERMAL PROCESSING CONTROLS - THERMOMETERS

(a) All thermal processing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the process. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.

(b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the thermal processing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.

(c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).

(d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.

(e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.

(f) The thermal processing unit shall not be operated without a recording thermometer chart in place, the pen in contact with the chart ~~chart~~, and an inked record being made of the operating time-temperature cycle. ~~Any indication of falsification of a thermometer chart shall constitute a violation. Falsification of a thermometer chart shall not occur.~~ A permanent file of the used thermometer charts shall be maintained by the thermal processor and kept available for inspection by the Division of Marine Fisheries for a period of one year. The following information shall be recorded within the confines of the pen markings after the thermal processing cycle has been completed:

- (1) ~~Date~~ date of thermal processing.
- (2) ~~Quantity~~ quantity of each batch thermally processed (pounds of crustacea meat or number and size of containers).
- (3) ~~Thermal~~ thermal processor's code of each pack.
- (4) ~~If~~ if the thermal processor processes crustacea meat for someone else, then the packer's name, address ~~address~~, and permit number ~~must~~ shall be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat.

(5) ~~Notation~~ notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the thermal processing cycle.

(6) ~~After~~ after the optimum temperature in the thermal process has been reached and during the holding time, the reading of the indicating thermometer and the time of reading shall be recorded on the chart.

(7) ~~Signature~~ signature of the thermal process operator.

(g) A constant flow steam control valve is required, if steam is used as a source of heat.

(h) The thermal processing unit shall be provided with effective and uniform temperature.

(i) Other technologies that provide the data, ~~information~~ information, and records as required in this Rule may be used if approved by the Division.

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

15A NCAC 18A .0185 THERMAL PROCESSING OF CRUSTACEA AND CRUSTACEA MEAT

(a) All thermal processing operations shall require a Process Validation Study Report approved by the Division of Marine Fisheries prior to operation.

(b) The thermal processing of crustacea or crustacea meat shall be conducted in compliance with the ~~following~~; following procedures:

(1) ~~The~~ the minimum thermal processing specifications shall be the ~~raising of the internal heating of previously cooked temperature of the container~~ of crustacea or crustacea meat to a desired temperature and for a specified time at the geometric center of a ~~container~~; container in equipment being operated in compliance with the Process Validation Study Report. ~~Each set of thermal processing equipment shall be standardized so that the minimum procedure can be obtained. The thermal process procedure shall be performed in accordance with the standardization report. This process~~ A copy of the procedures for operating the thermal processing equipment shall also be posted adjacent to the thermal processing unit. The thermal processor shall keep ~~on file~~ the standardization report on file and shall provide the Division a copy of such report.

(2) ~~Alteration~~ alteration of the equipment or loading of containers shall require ~~the procedure be restandardized.~~ a new Process Validation Study Report.

(3) ~~The~~ the containers of crustacea or crustacea meat shall be cooled to 50° F (10° C) or below within three ~~hours~~; hours of the completion of the thermal process.

(4) ~~Refrigerated~~ refrigerated storage shall be provided for the cooled crustacea or crustacea

meat and shall maintain a storage temperature at or below 36° F (2.2° C).

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

15A NCAC 18A .0186 LABELING OF THERMALLY PROCESSED CRUSTACEA OR CRUSTACEA MEAT

Labeling of thermally processed crustacea or crustacea meat shall be in compliance with the following:

- (1) ~~The~~ the label used shall clearly identify the contents of the container as thermally processed crustacea or crustacea meat.
- (2) ~~Each~~ each container shall be permanently and legibly identified with a code indicating the batch and day of processing.
- (3) ~~The~~ the words "Perishable-Keep Under Refrigeration" or equivalent shall be prominently displayed on the container.
- (4) ~~The~~ the original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, ~~embossed~~ embossed, or lithographed on each container. Each container shall be legibly impressed, ~~embossed~~ embossed, or lithographed with the name and address of the original packer, ~~repacker~~ repacker, or distributor.

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

15A NCAC 18A .0187 INTERFACILITY THERMAL PROCESSING PROCEDURES

Interfacility thermal processing of crustacea or crustacea meat shall be in ~~conjunction~~ compliance with the following:

- (1) ~~Crustacea~~ crustacea or crustacea meat shall be packed, ~~labeled~~ labeled, and refrigerated in compliance with Rules .0134 through .0187 of this Section. Records shall be maintained to identify each batch of crustacea or crustacea meat thermally processed.
- (2) ~~Crustacea~~ crustacea or crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature ~~between 33° F (0.5° C) and of~~ 40° F (4.4° C) or below.
- (3) ~~Crustacea~~ crustacea or crustacea meat shall be thermally processed in compliance with Rules .0184 through .0187 of this Section. The thermal processor shall provide a copy of each thermal processing chart to the original packer.

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

15A NCAC 18A .0191 MONITORING RECORDS

Monitoring records of critical control points and general sanitation requirements shall be recorded, as specified in ~~plan~~, the HACCP Plan, and signed and dated when recorded. The records shall be reviewed by the owner or designee within one week of recording.

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

**MARINE FISHERIES COMMISSION
SUMMARY OF PUBLIC HEARING FOR PROPOSED RULES
DIVISION OF MARINE FISHERIES
WEBEX ONLINE HEARING
AUG. 18, 2021, 6 PM**

Marine Fisheries Commission: Doug Cross

Division of Marine Fisheries Staff: Catherine Blum, Dana Gillikin, Shannon Jenkins, Tina Moore, Chris Nealon

Public: None

Media: None

Marine Fisheries Commissioner Doug Cross, serving as the hearing officer, opened the public hearing for Marine Fisheries Commission proposed rules at 6 p.m. No one from the public or media was in attendance. Seeing no one to provide comments on the proposed rules, Commissioner Cross closed the hearing at 6:10 p.m.

/cb



◊ North Carolina Wildlife Resources Commission ◊

Cameron Ingram, Executive Director

September 29, 2021

Catherine Blum
Rulemaking Coordinator
N.C. Division of Marine Fisheries
P.O. Box 769
Morehead City, NC 28557
catherine.blum@ncdenr.gov

RE: Comments on Division of Marine Fisheries Rule (15A NCAC 03M .0519 SHAD)

The Wildlife Resources Commission (WRC) respectfully submits the following comments on the Division of Marine Fisheries rule, formally proposed for reoption by the Marine Fisheries Commission (MFC) on May 20, 2021 and noticed in the N.C. Register on August 2, 2021.

American and Hickory Shad are within the jurisdiction of both the WRC and MFC. Removing the season and bag limit in rule and regulating through proclamation may create inconsistencies between inland, joint, and coastal fishing waters. Additionally, management through proclamation precludes public input, including the input of the WRC, on species we also manage. This could also lead to confusing regulations for anglers and prevents the agencies from achieving statutorily required rational and compatible management where concurrent jurisdiction exists.

Thank you for the opportunity to comment on this proposed rule change. If you have any questions, please contact me at.

Regards,

A handwritten signature in black ink that reads "Christian T. Waters".

Christian T. Waters
Inland Fisheries Division Chief
N.C. Wildlife Resources Commission

1 15A NCAC 03I .0108 is readopted with changes as published in 36:03 NCR 162 as follows:

2

3 **15A NCAC 03I .0108 OCEAN FISHING PIERS**

4 (a) It ~~is shall be~~ unlawful to fish with nets of any kind or from boats within the zone adjacent to any ocean fishing
5 pier meeting the requirements of G.S. 113-185(a), if such zone is marked by one of the following methods or a
6 combination of methods:

7 (1) ~~Yellow-yellow~~ range poles at least three inches in diameter and extending not less than six feet
8 above the surface of the ground, and ~~which-that~~ are parallel to the pier and identified by signs with
9 the name of the pier printed in letters at least three inches high; or

10 (2) ~~Buoys, which shall be-buoys that are~~ yellow in color and not less than nine inches in diameter and
11 extend no less than three feet above the surface of the water.

12 (b) It ~~is shall be~~ unlawful to define a zone that extends more than 750 feet from the pier. When a marking system
13 defines a smaller area than authorized, the limitations on fishing activities shall apply within the marked zone. When
14 the marking system does not include buoys placed seaward of the pier's offshore end, the zone protected under G.S.
15 113-185 shall be limited to the areas parallel to the sides of the pier and shall include no area seaward of the offshore
16 end of the pier.

17 (c) Owners of qualifying ocean piers shall be responsible for complying with all applicable local, ~~state-State,~~ and
18 federal regulations for marking systems.

19

20 *History Note: Authority G.S. 113-134; 113-181; 113-182; 143B-289.52;*

21 *Eff. January 1, 1991;*

22 *Recodified from 15A NCAC 3I .0008 Eff. December 17, 1996;*

23 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03I .0115 is readopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03I .0115 REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH**

4 (a) Fish, as used throughout this Rule, is defined in G.S. 113-129(7).

5 (b) Replacement ~~Costs Distinguished. As costs distinguished:~~ as it applies to fishes the term "replacement costs" ~~must~~
6 shall be distinguished from the "value" of the fish concerned. Except in cases where fish may lawfully be sold on the
7 open market, as with commercially reared species, the monetary value of the specimens cannot be determined easily.
8 The degree of special interest or concern in a particular species by the public, including not only anglers, but
9 conservationists and those to whom the value of fishes is primarily aesthetic, cannot be measured in dollar amounts.
10 The average cost of fish legally taken by anglers including travel and lodging, fishing equipment and bait, and excise
11 taxes on equipment, licenses and other fees, may fairly be estimated. This too, however, is a reflection on the value of
12 existing fishery resources rather than a measure of the cost of their replacement. Thus, the relative value of fish species
13 shall be considered only as they may bear on the necessity or desirability of actual replacement.

14 (c) Determining replacement ~~costs. The costs:~~ the replacement costs of species of fishes that have been taken, injured,
15 removed, harmfully altered, damaged, or destroyed shall be determined as follows. The weight of each undersized
16 fish shall be adjusted to the average weight of a fish on the minimum legal size established by the Marine Fisheries
17 Commission for that species. The replacement cost shall be calculated based on the greater of either:

- 18 (1) the cost of propagating and rearing the species in a hatchery and the cost of transporting them to
19 areas of suitable habitat; or
20 (2) the average annual ex-vessel value of fish species per pound.

21 (d) The cost of propagating, ~~rearing-rearing,~~ and transporting the fish and the average annual ex-vessel value of fish
22 species per pound shall be taken from the Division of Marine Fisheries annual statistical report for the calendar year
23 next preceding the year in which the offense was committed. When the cost of propagating, ~~rearing-rearing,~~ or
24 transporting a particular species is not available, replacement costs shall be calculated based upon the average annual
25 ex-vessel value of the species. When neither the cost of propagating, ~~rearing-rearing,~~ or transporting a particular
26 species, nor the average annual ex-vessel value of the species is available, replacement costs shall be determined
27 according to the following factors:

- 28 (1) whether the species is classified as endangered or threatened;
29 (2) the relative frequency of occurrence of the species in the ~~state;~~ State;
30 (3) the extent of existing habitat suitable for the species within the ~~state;~~ State;
31 (4) the dependency of the species on unique habitat requirements;
32 (5) the cost of improving and maintaining suitable habitat for the species;
33 (6) the cost of capturing the species in areas of adequate populations and transplanting them to areas of
34 suitable habitat with low populations;
35 (7) the availability of the species and the cost of acquisition for restocking purposes;
36 (8) the cost of those species ~~which,~~ that when released, have a probability of survival in the wild; and

1 (9) the ratio between the natural life expectancy of the species and the period of its probable survival
2 when, having been reared in a hatchery, it is released to the wild.

3 (e) Replacement costs ~~will~~ shall be assessed for the following fish:

- 4 (1) Alewife (River Herring);
- 5 (2) Amberjacks;
- 6 (3) Anglerfish (Goosefish);
- 7 (4) Bluefish;
- 8 (5) Bonito;
- 9 (6) Butterfish;
- 10 (7) Carp;
- 11 (8) Catfishes;
- 12 (9) Cobia;
- 13 (10) Croaker, Atlantic;
- 14 (11) Cutlassfish, Atlantic;
- 15 (12) Dolphinfish;
- 16 (13) Drum, Black;
- 17 (14) Drum, Red (Channel Bass);
- 18 (15) Eels;
- 19 (16) Flounders;
- 20 (17) Flounders, Fluke;
- 21 (18) Garfish;
- 22 (19) Gizzard Shad;
- 23 (20) Groupers;
- 24 (21) Grunts;
- 25 (22) Hakes;
- 26 (23) Harvestfish;
- 27 (24) Herring, Thread;
- 28 (25) Hickory Shad;
- 29 (26) Hogfish;
- 30 (27) Jacks;
- 31 (28) Kingfishes (Sea Mullet);
- 32 (29) Mackerel, Atlantic;
- 33 (30) Mackerel, King;
- 34 (31) Mackerel, Spanish;
- 35 (32) Menhaden, Atlantic;
- 36 (33) Mullet;
- 37 (34) Perch, White;

- 1 (35) Perch, Yellow;
- 2 (36) Pigfish;
- 3 (37) Pompano;
- 4 (38) Porgies;
- 5 (39) Scup;
- 6 (40) Sea Basses;
- 7 (41) Seatrout, Spotted;
- 8 (42) Shad (American);
- 9 (43) Sharks;
- 10 (44) Sharks, Dogfish;
- 11 (45) Sheepshead;
- 12 (46) Skippers;
- 13 (47) Snappers;
- 14 (48) Spadefish, Atlantic;
- 15 (49) Spot;
- 16 (50) Striped Bass;
- 17 (51) Swellfishes (Puffers);
- 18 (52) Swordfish;
- 19 (53) Tilefish;
- 20 (54) Triggerfish;
- 21 (55) Tuna;
- 22 (56) Wahoo;
- 23 (57) Weakfish (Grey Trout);
- 24 (58) Whiting;
- 25 (59) Wreckfish;
- 26 (60) Unclassified Fish;
- 27 (61) Brown Shrimp;
- 28 (62) Pink Shrimp;
- 29 (63) Rock Shrimp;
- 30 (64) White Shrimp;
- 31 (65) Unclassified Shrimp;
- 32 (66) Clam, Hard;
- 33 (67) Conchs;
- 34 (68) Crabs, Blue, Hard;
- 35 (69) Crabs, Blue, Soft;
- 36 (70) Octopus;
- 37 (71) Oyster;

- 1 (72) Scallop, Bay;
- 2 (73) Scallop, Calico;
- 3 (74) Scallop, Sea;
- 4 (75) Squid; **and**
- 5 (76) Unclassified Shellfish.

6 (f) Cost of ~~Investigations:~~**investigations:**

7 (1) ~~Factors factors~~ to be ~~Considered. Upon considered:~~ **upon** any investigation required as provided by
8 G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of
9 marine and estuarine resources ~~which that~~ have been killed, taken, injured, removed, harmfully
10 altered, damaged, or destroyed, the factors to be considered in determining the cost of the
11 investigation ~~are shall be~~ as follows:

- 12 (A) the time expended by the employee or employees making the investigation, including travel
13 time between the place of usual employment and the site of the investigation, and the time
14 required in formulating and rendering the report;
- 15 (B) the cost of service to the state of each employee concerned, including annual salary,
16 hospitalization insurance, and the state's contribution to social security taxes and to the
17 applicable retirement system;
- 18 (C) subsistence of the investigating personnel, including meals, reasonable gratuities, and
19 lodging away from home, when required;
- 20 (D) the cost of all necessary transportation;
- 21 (E) the use or rental of boats and motors, when required;
- 22 (F) the cost of cleaning or repairing any uniform or clothing that may be damaged, **soiled**
23 **soiled**, or contaminated by reason of completing the investigation;
- 24 (G) the cost of necessary telephonic communications; **and**
- 25 (H) any other expense directly related to and necessitated by the investigation.

26 (2) ~~Computation of Costs. In computation of costs: in~~ assessing the cost of time expended in completing
27 the investigation, the time expended by each person required to take part in the investigation shall
28 be recorded in hours, the value of which shall be computed according to the ratio between the annual
29 cost of service of the employee and his **or her** total annual working hours (2087 hours reduced by
30 holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:

- 31 (A) subsistence: the per diem amount for meals, reasonable gratuities, and lodging away from
32 home, not to exceed the then current maximum per diem for state employees;
- 33 (B) transportation: total mileage by motor vehicle multiplied by:
 - 34 (i) the then current rate per mile for travel by state-owned vehicle; or
 - 35 (ii) the then current rate per mile for travel by ~~privately owned~~ **privately-owned**
36 vehicle, as applicable;
- 37 (C) boat and motor: ten dollars (\$10.00) per hour;

- 1 (D) uniform and clothing cleaning and repair: actual cost;
2 (E) telephonic communications: actual cost; **and**
3 (F) other expenses: actual cost.
4

5 *History Note:* Authority G.S. 113-134; **113-182**; 113-267; 143B-289.52;
6 Eff. March 1, 1995;
7 Recodified from 15A NCAC 3I .0015 Eff. December 17, 1996;
8 Readopted Eff. April 1, 2022.

1 15A NCAC 03I .0122 is readopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03I .0122 USER CONFLICT RESOLUTION**

4 (a) ~~In order to~~ To address user conflicts, the Fisheries Director may, by proclamation, impose any ~~or all~~ of the
5 following restrictions:

- 6 (1) specify time;
- 7 (2) specify area;
- 8 (3) specify means and methods;
- 9 (4) specify ~~seasons;~~ season; and
- 10 (5) specify quantity.

11 This authority may be used based on the Fisheries Director's own findings or on the basis of a valid request in
12 accordance with Paragraph (b) of this Rule. The Fisheries Director shall hold a public meeting in the area of the user
13 conflict prior to issuance of a proclamation based on his or her own findings.

14 (b) Request for user conflict resolution:

15 (1) ~~Any person(s) any person~~ desiring user conflict resolution may make such request in writing
16 addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769,
17 3441 Arendell St., Morehead City, NC 28557-0769, 28557. A request shall contain the following
18 information:

- 19 (A) a map of the affected area including an inset vicinity map showing the location of the area
20 with detail sufficient to permit on-site identification and location;
- 21 (B) identification of the user conflict causing a need for user conflict resolution;
- 22 (C) recommended solution for resolving user conflict; and
- 23 (D) name and address of the ~~person(s) person~~ requesting user conflict resolution.

24 (2) ~~Within within~~ 90 days of the receipt of the information required in Subparagraph (b)(1) of this ~~Rule,~~
25 ~~Paragraph,~~ the Fisheries Director shall review the information and determine if user conflict
26 resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny
27 the request. If user conflict resolution is necessary, the Fisheries Director or ~~his or her~~ designee shall
28 hold a public meeting in the area of the user conflict. The requestor shall present his or her request
29 at the public meeting.

30 (3) ~~Following following~~ the public meeting as described in Subparagraph (b)(2) of this ~~Rule, Paragraph,~~
31 the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the
32 user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval
33 a proclamation to the Marine Fisheries Commission that addresses the conflict.

34 (4) ~~Proclamations proclamations~~ issued under this Rule shall suspend appropriate rules or portions of
35 rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The
36 provisions of Rule .0102 of this Section terminating suspension of a rule pending the next Marine

1 Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the
2 next meeting shall not apply to proclamations issued under this Rule.

3

4 *History Note: Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52;*

5 *Eff. May 1, 2015;*

6 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03J .0103 is adopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS**

4 (a) It ~~is shall be~~ unlawful to use gill nets:

- 5 (1) with a mesh length less than two and one-half inches; and
- 6 (2) in Internal ~~Coastal~~ Waters from April 15 through December 15, with a mesh length five inches or
7 greater and less than five and one-half inches.

8 (b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in Coastal Fishing
9 Waters, or any portion thereof, or impose any ~~or all~~ of the following restrictions on gill net or seine fishing operations:

- 10 (1) specify time;
- 11 (2) specify area;
- 12 (3) specify means and methods, including:
 - 13 (A) gill net mesh length, but the maximum length specified shall not exceed six and one-half
14 inches in Internal ~~Coastal~~ Waters; and
 - 15 (B) net number and length, but for gill nets with a mesh length four inches or greater, the
16 maximum length specified shall not exceed 2,000 yards per vessel in Internal ~~Coastal~~
17 Waters regardless of the number of individuals involved; and
- 18 (4) specify season.

19 (c) It ~~is shall be~~ unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean
20 for recreational purposes, or any gill nets in Internal ~~Coastal~~ Waters unless nets are marked by attaching to them at
21 each end two separate yellow buoys ~~which that~~ shall be of solid foam or other solid buoyant material no less than five
22 inches in diameter and no less than five inches in length. Gill nets that are not connected together at the top line are
23 considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at
24 the top line are considered as a continuous net requiring two buoys at each end of the continuous net. Any other
25 marking buoys on gill nets used for recreational purposes shall be yellow except ~~that~~ one additional buoy, any shade
26 of hot pink in color, constructed as specified in this Paragraph, shall be added at each end of each individual net. Any
27 other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional
28 identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or
29 both ends. The ~~owner-gear owner's last name and initials~~ shall be identified on a buoy on each end ~~either~~ by using
30 engraved buoys or by attaching engraved metal or plastic tags to the buoys. ~~Such If a vessel is used, the~~ identification
31 shall ~~also~~ include ~~owner's last name and initials and if a vessel is used,~~ one of the following:

- 32 (1) ~~gear~~ owner's ~~N.C.-current~~ motor boat registration number; or
- 33 (2) ~~gear~~ owner's U.S. vessel documentation name.

34 (d) It ~~is shall be~~ unlawful to use gill nets:

- 35 (1) within 200 yards of any flounder or other finfish pound net set with lead and either pound or heart
36 in use, except from August 15 through December 31 in all Coastal Fishing Waters of the Albemarle
37 Sound, including its tributaries to the boundaries between Coastal and Joint Fishing Waters, west of

1 a line beginning at a point ~~36° 04.5184' N – 75° 47.9095' W~~ ~~36° 04.5184' N – 75° 47.9095' W~~ on
2 Powell Point; running southerly to a point ~~35° 57.2681' N – 75° 48.3999' W~~ ~~35° 57.2681' N – 75°~~
3 ~~48.3999' W~~ on Caroon Point, it ~~is shall be~~ unlawful to use gill nets within 500 yards of any pound
4 net set with lead and either pound or heart in use; and

5 (2) from March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or
6 highway bridge.

7 (e) It ~~is shall be~~ unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway
8 Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South
9 Carolina line, unless such net is used in accordance with the following conditions:

10 (1) no more than two gill nets per vessel may be used at any one time;

11 (2) any net used must be attended by the fisherman from a vessel who shall at no time be more than 100
12 yards from either net; and

13 (3) any individual setting such nets shall remove them, when necessary, in sufficient time to permit
14 unrestricted vessel navigation.

15 (f) It ~~is shall be~~ unlawful to use runaround, drift, or other non-stationary gill nets, except as provided in Paragraph (e)
16 of this Rule:

17 (1) to block more than two-thirds of any natural or manmade waterway, sound, bay, creek, inlet, or any
18 other body of water; or

19 (2) in a location where it will interfere with navigation.

20 (g) It ~~is shall be~~ unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing
21 operation in the gill net attended areas designated in 15A NCAC 03R .0112(a).

22 (h) It ~~is shall be~~ unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing
23 operation from May 1 through November 30 in the Internal ~~Coastal~~ Waters and Joint Fishing Waters of the state
24 designated in 15A NCAC 03R .0112(b).

25 (i) It ~~is shall be~~ unlawful for any portion of a gill net with a mesh length five inches or greater to be within 10 feet of
26 any point on the shoreline while set or deployed, unless the net is attended from June through October in Internal
27 ~~Coastal~~ Waters.

28 (j) For the purpose of this Rule and 15A NCAC 03R .0112, "shoreline" ~~is defined as shall mean~~ the mean high water
29 line or marsh line, whichever is more seaward.

30
31 *History Note:* Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;

32 Eff. January 1, 1991;

33 Amended Eff. August 1, 1998; March 1, 1996; March 1, 1994; July 1, 1993; September 1, 1991;

34 Temporary Amendment Eff. October 2, 1999; July 1, 1999; October 22, 1998;

35 Amended Eff. April 1, 2001;

36 Temporary Amendment Eff. May 1, 2001;

1 *Amended Eff. April 1, 2016; April 1, 2009; December 1, 2007; September 1, 2005; August 1, 2004;*
2 *August 1, 2002;*
3 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03J .0104 is readopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03J .0104 TRAWL NETS**

4 (a) It ~~is shall be~~ unlawful to possess aboard a vessel while using a trawl net in Internal ~~Coastal~~ Waters more than 500
5 pounds of finfish from December 1 through March 1, and 1,000 pounds of finfish from March 2 through November
6 30.

7 (b) It ~~is shall be~~ unlawful to use trawl nets:

8 (1) in Internal ~~Coastal~~ Waters from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:

9 (A) from December 1 through March 1 from one hour after sunset on Friday to one hour before
10 sunrise on Monday in the areas listed in Subparagraph (b)(5) of this ~~Rule; Paragraph;~~ or

11 (B) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A
12 NCAC 03O .0503;

13 (2) for the taking of oysters;

14 (3) in Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south
15 shore of Long Point at a point 36° 02.4910' N – 75° 44.2140' W; running southerly to the north shore
16 on Roanoke Island to a point 35° 56.3302' N – 75° 43.1409' W; running northwesterly to Caroon
17 Point to a point 35° 57.2255' N – 75° 48.3324' W;

18 (4) in the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by
19 proclamation, open the area designated in ~~Item (1) of~~ 15A NCAC 03R ~~.0106 .0106(1)~~ to peeler crab
20 trawling;

21 (5) from December 1 through March 1 from one hour after sunset to one hour before sunrise in the
22 following areas:

23 (A) in Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N –
24 76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N – 76°
25 34.5135' W;

26 (B) in Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76°
27 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76°
28 35.9333' W;

29 (C) in Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155'
30 W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;

31 (D) in Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at
32 a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side of
33 the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and

34 (E) in New River, all waters upstream of the N.C. Highway 172 Bridge when opened by
35 proclamation; and

1 (6) in designated pot areas opened to the use of pots by ~~15A NCAC 03J .0301(a)(2)~~ of this Subchapter
2 and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) within an area bound
3 by the shoreline to the depth of six feet.

4 (c) Mesh sizes for shrimp and crab trawl nets shall meet the requirements of 15A NCAC 03L .0103 and .0202.

5 (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require
6 bycatch reduction devices or ~~codend-cod end (tailbag)~~ modifications in trawl nets to reduce the catch of finfish that
7 do not meet size limits or are unmarketable as individual foodfish by reason of size.

8 (e) It ~~is shall be~~ unlawful to use shrimp trawl nets for recreational purposes unless the trawl net is marked by attaching
9 to the ~~codend-cod end (tailbag)~~ ~~one-a~~ floating buoy, any shade of hot pink in ~~color, which-color.~~ Buoys shall be of
10 solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length.
11 The ~~owner-gear owner's last name and initials~~ shall be identified on the attached buoy by using an engraved buoy or
12 by attaching engraved metal or plastic tags to the buoy. ~~Such-If a vessel is used, the~~ identification shall also include
13 ~~owner's last name and initials and, if a vessel is used,~~ one of the following:

14 (1) gear owner's current motor boat registration number; or

15 (2) gear owner's U.S. vessel documentation name.

16 (f) It ~~is shall be~~ unlawful to use shrimp trawl nets for the taking of blue crabs in Internal ~~Coastal~~ Waters, except that
17 it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following
18 limitations:

19 (1) for individuals using shrimp trawl nets authorized by a Recreational Commercial Gear License, 50
20 blue crabs per day, not to exceed 100 blue crabs if two or more Recreational Commercial Gear
21 License holders are on board the same vessel; and

22 (2) for commercial operations, crabs may be taken incidental to lawful shrimp trawl net operations
23 provided that the weight of the crabs shall not exceed the greater of:

24 (A) 50 percent of the total weight of the combined crab and shrimp catch; or

25 (B) 300 pounds.

26 (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure
27 compliance with this Rule.

28
29 *History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;*

30 *Eff. February 1, 1991;*

31 *Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992;*

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

33 *Amended Eff. May 1, 2017; April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August*
34 *1, 2000;*

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

1 15A NCAC 03J .0106 is readopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03J .0106 CHANNEL NETS**

4 (a) It ~~is shall be~~ unlawful to use a channel net:

- 5 (1) ~~Until until~~ the Fisheries Director specifies by proclamation, time periods and areas for the use of
6 channel nets and other fixed nets for shrimping.
7 (2) ~~Without without~~ yellow light reflective tape on the top portion of each staff or stake and on any
8 buoys located at either end of the net.
9 (3) ~~With with~~ any portion of the set including boats, anchors, cables, ~~ropes ropes~~, or nets within 50 feet
10 of the center line of the Intracoastal Waterway Channel.
11 (4) ~~In in~~ the middle third of any navigation channel marked by ~~U.S. Army~~ Corps of Engineers or U.S.
12 Coast Guard.
13 (5) ~~Unless unless~~ attended by the fisherman who shall be no more than 50 yards from the net at all
14 times.

15 (b) It ~~is shall be~~ unlawful to use or possess aboard a vessel any channel net with a corkline exceeding 40 yards.

16 (c) It ~~is shall be~~ unlawful to leave any channel net, channel net buoy, or channel net stakes in ~~coastal fishing waters~~
17 ~~Coastal Fishing Waters~~ from December 1 through March 1.

18 (d) It ~~is shall be~~ unlawful to use floats or buoys of metallic material for marking a channel net set.

19 (e) From March 2 through November 30, cables used in a channel net operation shall, when not attached to the net,
20 be connected together and any attached buoy shall be connected by non-metal line.

21 (f) It ~~is shall be~~ unlawful to leave channel net buoys in ~~coastal fishing waters~~ ~~Coastal Fishing Waters~~ without yellow
22 light reflective tape on each buoy and without the ~~gear~~ owner's ~~identification~~ ~~last name and initials~~ being legibly
23 printed on each buoy. ~~Such~~ ~~If a vessel is used, the~~ identification ~~must~~ ~~shall also~~ include one of the following:

- 24 (1) ~~Owner's N.C. motorboat gear~~ ~~owner's current motor boat~~ registration number; or
25 (2) ~~Owner's gear~~ ~~owner's~~ U.S. vessel documentation ~~name;~~ ~~or name.~~
26 (3) ~~Owner's last name and initials.~~

27 (g) It ~~is shall be~~ unlawful to use any channel nets, anchors, lines, or buoys in such a manner as to constitute a hazard
28 to navigation.

29 (h) It ~~is shall be~~ unlawful to use channel nets for the taking of blue crabs in ~~internal waters,~~ ~~Internal Waters,~~ except
30 that it shall be permissible to take or possess blue crabs incidental to channel net operations in accordance with the
31 following limitations:

- 32 (1) ~~Crabs crabs~~ may be taken incidental to lawful channel net operations provided that the weight of the
33 crabs shall not exceed:
34 (A) 50 percent of the total weight of the combined crab and shrimp catch; or
35 (B) 300 pounds, whichever is greater.
36 (2) ~~The the~~ Fisheries Director may, by proclamation, close any area to channel net use for specific time
37 periods in order to secure compliance with this Paragraph.

1

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

3 *Eff. January 1, 1991;*

4 *Amended Eff. September 1, 2005;*

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

1 15A NCAC 03J .0111 is readopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03J .0111 FYKE OR HOOP NETS**

4 (a) It ~~is shall be~~ unlawful to use fyke or hoop nets in ~~coastal fishing waters~~ Coastal Fishing Waters without:

5 (1) the owner's identification being clearly printed on a sign no less than six inches square, securely
6 attached on an outside corner stake of each such net; or

7 (2) each net being marked by attaching a floating buoy to a single net and a buoy on each end of the
8 line connecting multiple (two or more) nets, when stakes are not used. Buoys shall be of any color
9 except any shade of yellow or any shade of hot pink, or any combination of colors that include any
10 shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant

11 material ~~and~~ no less than five inches in diameter and no less than five inches in length. Buoys shall
12 be of any color except yellow or hot pink. The ~~owner gear~~ owner's last name and initials shall ~~always~~
13 be identified on the attached buoy by using engraved buoys or by attaching engraved metal or plastic
14 tags ~~attached~~ to the buoy. ~~Such~~ If a vessel is used, the identification shall ~~include the gear owner's~~
15 ~~current motorboat registration number and the gear owner's last name and initials,~~ also include:

16 (A) gear owner's current motor boat registration number; or

17 (B) gear owner's U.S. vessel documentation name.

18 (b) It ~~is shall be~~ unlawful to use a fyke or hoop net within 200 yards of any operational pound net set.

19 (c) It ~~is shall be~~ unlawful to use a fyke or hoop net within 150 yards of any railroad or highway bridge.

20
21 *History Note: Authority G.S. 113-134; 113-182; ~~113-221;~~ 143B-289.52;*

22 *Temporary Adoption Eff. August 1, 2000;*

23 *Amended Eff. April 1, 2003; April 1, 2001;*

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

1 15A NCAC 03J .0202 is readopted with changes as published in 36:03 NCR 162 as follows:

2
3 **15A NCAC 03J .0202 ATLANTIC OCEAN**

4 In the Atlantic Ocean:

- 5 (1) ~~It is it shall be~~ unlawful to use nets from June 15 through August 15 in the waters of Masonboro
6 Inlet or in the ocean within 300 yards of the beach between Masonboro Inlet and a line running
7 southeasterly through the water tank ~~34° 13.1500' N – 77° 47.300' W~~ 34° 13.1500' N – 77° 47.3000'
8 W on the northern end of Wrightsville Beach, a distance of 4400 yards parallel with the beach.
- 9 (2) ~~It is it shall be~~ unlawful to use trawls within one-half mile of the beach between the Virginia-North
10 Carolina/Virginia state line and Oregon Inlet.
- 11 (3) ~~It is it shall be~~ unlawful to use a trawl with a mesh length less than four inches in the main body,
12 three inches in the extension, and one and three-fourths inches in the cod end or ~~tail bag~~ tailbag
13 inshore of a line beginning on the western side of Beaufort Inlet Channel at a point ~~34° 41.3000'~~
14 N – 76° 40.1333' W; 34° 41.3000' N – 76° 40.1333' W; running westerly parallel to and one-half
15 miles from the shore off Salter Path to a point ~~34° 40.5333' N – 76° 53.7500' W~~ 34° 40.5333' N –
16 76° 53.7500' W.
- 17 (4) ~~It is it shall be~~ unlawful to use trawl nets, including flynets, southwest of the 9960-Y chain 40250
18 LORAN C line (running offshore in a southeasterly direction) from Cape Hatteras to the North
19 Carolina/South Carolina state line except:
20 ~~(A)(a) Shrimp~~ shrimp trawls as defined in 15A NCAC 03L .0103;
21 ~~(B)(b) Crab~~ crab trawls as defined in 15A NCAC 03L .0202; or
22 ~~(C)(c) Flounder~~ flounder trawls as defined in 15A NCAC 03M .0503.
- 23 (5) ~~It is it shall be~~ unlawful to possess finfish (including pursuant to 15A NCAC 03M .0102) incidental
24 to shrimp or crab trawl operations from December 1 through March 31 unless the weight of the
25 combined catch of shrimp and crabs exceeds the weight of finfish, except an additional 300 pounds
26 of kingfish (*Menticirrhus*, spp.) may be taken south of Bogue Inlet.
- 27 (6) ~~It is it shall be~~ unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within
28 300 yards of the beach from Beaufort Inlet to the ~~South-North Carolina/South~~ South-North Carolina/South Carolina state line
29 from sunset Friday to sunrise Monday from Memorial Day through Labor Day.
- 30 (7) ~~It is it shall be~~ unlawful to use gill nets in the Atlantic Ocean with a mesh length greater than seven
31 inches from April 15 through December 15.
- 32 (8) ~~It is it shall be~~ unlawful to use shrimp trawls in all waters west of a line beginning at the southeastern
33 tip of Baldhead Island at a point ~~33° 50.4833' N – 77° 57.4667' W;~~ 33° 50.4833' N – 77° 57.4667'
34 W; running southerly in the Atlantic Ocean to a point ~~33° 46.2667' N – 77° 56.4000' W;~~ 33° 46.2667'
35 N – 77° 56.4000' W; from 9:00 ~~P.M. p.m.~~ P.M. p.m. through 5:00 ~~A.M. a.m.~~ A.M. a.m.

36
37 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*

1 *Eff. January 1, 1991;*
2 *Amended Eff. March 1, 1996; September 1, 1991;*
3 *Temporary Amendment Eff. December 1, 1997;*
4 *Amended Eff. October 1, 2008; August 1, 2004; August 1, 1998;*
5 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03J .0208 is readopted with changes as published in 36:03 NCR 162 as follows:

2

3 **15A NCAC 03J .0208 NEW RIVER**

4 (a) It ~~is shall be~~ unlawful to use trawl nets except skimmer trawls upstream of the Highway 172 Bridge over New
5 River.

6 (b) It ~~is shall be~~ unlawful to use skimmer trawls upstream of the Highway 172 Bridge over New River from 9:00 ~~P.M.~~
7 ~~p.m.~~ through 5:00 ~~A.M.-a.m.~~ from August 16 through November 30.

8

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

10 *Eff. August 1, 1998;*

11 *Amended Eff. May 1, 2015; August 1, 2004;*

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

1 15A NCAC 03J .0401 is readopted with changes as published in 36:03 NCR 163 as follows:

2
3 **SECTION .0400 - FISHING GEAR**

4
5 **15A NCAC 03J .0401 FISHING GEAR**

6 (a) The Fisheries ~~Director~~ Director, in order to address issues involving user conflicts may, by proclamation, close
7 the areas described in Paragraph (b) of this Rule to the use of specific fishing gear.

8 (b) It ~~is shall be~~ unlawful to use fishing gear as specified by proclamation at the time and dates specified in the
9 proclamation between the Friday before Easter through December 31 in the following areas when such areas have
10 been closed by proclamation:

11 (1) ~~All-all~~ or part of the Atlantic Ocean, up to one-half mile from the beach;

12 (2) ~~Up-up~~ to one-half mile in all directions of Oregon Inlet;

13 (3) ~~Up-up~~ to one-half mile in all directions of Hatteras Inlet;

14 (4) ~~Up-up~~ to one-half mile in all directions of Ocracoke Inlet;

15 (5) ~~Up-up~~ to one-half mile of the Cape Lookout Rock Jetty;

16 (6) ~~Up-up~~ to one-half mile in all directions of fishing piers open to the public;

17 (7) ~~Up-up~~ to one-half mile in all directions of State Parks; ~~and~~

18 (8) ~~Up-up~~ to one-half mile of marinas as defined by the Coastal Resources Commission.

19 (c) The Fisheries Director shall specify in the proclamation the boundaries of the closure through the use of maps,
20 legal descriptions, prominent ~~landmarks~~ landmarks, or other permanent type markers.

21 (d) The Fisheries Director shall hold a public meeting in the affected area before issuance of proclamations authorized
22 by this Rule.

23
24 *History Note: Authority G.S. 113-133; 113-134; 113-182; ~~113-221~~; 113-221.1; 143B-289.52;*

25 *Eff. July 1, 1993;*

26 *Amended Eff. June 1, 1996; March 1, 1995; October 1, 1993;*

27 *Readopted Eff. April 1, 2022.*

1 15A NCAC 03J .0402 is readopted with changes as published in 36:03 NCR 163 as follows:

2
3 **15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS**

4 (a) It ~~is shall be~~ unlawful to use commercial fishing gear in the following areas during dates and times specified for
5 the identified areas:

6 (1) Atlantic Ocean - Dare County:

7 (A) Nags Head:

8 (i) ~~Seines seines~~ and gill nets may not be used from the North Town Limit of Nags
9 Head at Eight Street southward to Gulf Street:

10 (I) ~~From from~~ Wednesday through Saturday of the week of the Nags Head
11 Surf Fishing Tournament held during October of each year the week
12 prior to Columbus Day.

13 (II) ~~From from~~ November 1 through December 15.

14 (ii) ~~Commercial commercial~~ fishing gear may not be used within 750 feet of licensed
15 fishing piers when open to the public.

16 (B) Oregon ~~Inlet. Seines Inlet: seines~~ and gill nets may not be used from the Friday before
17 Easter through December 31:

18 (i) ~~Within within~~ one-quarter mile of the beach from the National Park Service Ramp
19 #4 (~~35° 48.2500' N – 75° 32.7000' W~~)(~~35° 48.2500' N – 75° 32.7000' W~~) on Bodie
20 Island to the northern terminus of the Bonner Bridge (~~35° 46.5000' N – 75°~~
21 ~~32.3666' W~~)(~~35° 46.5000' N – 75° 32.3666' W~~) on Hwy. 12 over Oregon Inlet.

22 (ii) ~~Within within~~ the area known locally as "The Pond", a body of water generally
23 located to the northeast of the northern terminus of the Bonner Bridge.

24 (C) Cape Hatteras (Cape ~~Point. Seines Point): seines~~ and gill nets may not be used within one-
25 half mile of Cape Point from the Friday before Easter through December 31. The closed
26 area is defined by a circle with a one-half mile radius having the center near Cape Point at
27 a point ~~35° 12.9000' N – 75° 31.7166' W~~~~35° 12.9000' N – 75° 31.7166' W~~.

28 (2) Atlantic Ocean - Onslow and Pender ~~Counties. Commercial counties: commercial~~ fishing gear may
29 not be used during the time specified for the following areas:

30 (A) Topsail ~~Beach. From Beach: from~~ January 1 through December 31, that area around Jolly
31 Roger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier
32 and on the northeast and southwest by a line beginning at a point on the beach one-quarter
33 mile from the pier extending seaward to intersect the offshore boundary.

34 (B) Surf City:

35 (i) ~~From from~~ January 1 to June 30, that area around the Surf City Fishing Pier
36 bordered on the offshore side by a line 750 feet from the end of the pier, on the
37 southwest by a line beginning at a point on the beach one-quarter mile from the

1 pier and on the northeast by a line beginning at a point on the beach 750 feet from
2 the pier extending seaward to intersect the offshore boundaries.

- 3 (ii) ~~From from~~ July 1 to December 31, those areas around the pier bordered on the
4 offshore side by a line 750 feet from the end of the pier, on the southwest by a
5 line beginning at a point on the beach 750 feet from the pier and on the northeast
6 by a line beginning at a point on the beach one-quarter mile from the pier
7 extending seaward to intersect the offshore boundaries.

- 8 (3) Atlantic Ocean - New Hanover ~~County-County:~~ Carolina Beach Inlet through Kure ~~Beach-~~
9 ~~Commercial-Beach: commercial~~ fishing gear may not be used during the times specified for the
10 following areas:

- 11 (A) ~~From from~~ the Friday before Easter to November 30, within the zones adjacent to the
12 Carolina Beach and Kure Beach Fishing Piers bordered on the offshore side by a line 750
13 feet from the ends of the piers and on the north and south by a line beginning at a point on
14 the beach one-quarter mile from the pier extending seaward to intersect the offshore
15 boundary, except the southern boundary for Kure Beach Pier is a line beginning on the
16 beach one mile south of the pier to the offshore boundary for the pier.

- 17 (B) ~~From from~~ May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet
18 to the southern end of Kure Beach with the following exceptions:

- 19 (i) ~~From from~~ one-quarter mile north of Carolina Beach Fishing pier to Carolina
20 Beach Inlet from October 1 to November 30:

21 (I) ~~Strike-strike~~ nets may be used within 900 feet of the beach; ~~and~~

22 (II) ~~Attended-attended~~ nets may be used between 900 feet and one-quarter
23 mile of the beach.

- 24 (ii) ~~Strike-strike~~ nets and attended gill nets may be used within 900 feet of the beach
25 from October 1 to November 30 in other areas except those described in Part
26 (a)(3)(A) and Subpart (a)(3)(B)(i) of this ~~Rule-Subparagraph.~~

- 27 (iii) ~~It is-it shall be~~ unlawful to use commercial fishing gear within 900 feet of the
28 beach from Carolina Beach Inlet to a point on the beach 33°55.0026' N –
29 77°56.6630' W near the former location of New Inlet during the October surf
30 fishing tournament in Carolina Beach.

- 31 (4) Pamlico River – Beaufort ~~County-County:~~ Goose Creek State ~~Park-Commercial-Park: commercial~~
32 fishing gear may not be used from the Friday before Easter through December 31 for the following
33 areas:

- 34 (A) ~~Within-within~~ 150 feet of the shoreline within park boundaries; ~~and~~

- 35 (B) ~~Within-within~~ the marked channel from Dinah Landing to the mouth of Upper Goose
36 Creek.

1 (b) It ~~is shall be~~ unlawful to use gill nets or seines in the following areas during dates and times specified for the
2 identified areas:

- 3 (1) Neuse River and South River, Carteret ~~County. No County: no~~ more than 1,200 feet of gill ~~net(s)~~
4 ~~nets~~ having a stretched mesh of five inches or larger may be used:
- 5 (A) ~~Within within~~ one-half mile of the shore from Winthrop Point at Adams Creek to Channel
6 Marker "2" at the mouth of Turnagain Bay.
- 7 (B) ~~Within within~~ South River.
- 8 (2) Cape Lookout, Carteret County:
- 9 (A) ~~Gill gill~~ nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock
10 Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
- 11 (B) ~~Seines seines~~ may not be used within one-half mile of the shore from Power Squadron Spit
12 south to Cape Point and northward to Cape Lookout Lighthouse including the area inside
13 the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to
14 the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit
15 from 12:01 a.m. Saturdays until 12:01 a.m. Mondays from May 1 through November 30.
- 16 (3) State ~~Parks/Recreation Areas: parks/recreation areas:~~
- 17 (A) ~~Gill gill~~ nets or seines may not be used in the Atlantic Ocean within one-quarter mile of
18 the shore at Fort Macon State Park, Carteret County.
- 19 (B) ~~Gill gill~~ nets or seines may not be used in the Atlantic Ocean within one-quarter mile of
20 the shore at Hammocks Beach State Park, Onslow County, from May 1 through October
21 1, except strike nets and attended gill nets may be used beginning August 15.
- 22 (C) ~~Gill gill~~ nets or seines may not be used within the boat basin and marked entrance channel
23 at Carolina Beach State Park, New Hanover County.
- 24 (4) ~~Mooring Facilities/Marinas. Gill mooring facilities/marinas: gill~~ nets or seines may not be used from
25 May 1 through November 30 within:
- 26 (A) ~~One quarter one-quarter~~ mile of the shore from the east boundary fence to the west
27 boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
- 28 (B) ~~Canals canals~~ within Pine Knoll Shores, Carteret County;
- 29 (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; Harbor
30 Village Marina on Topsail Sound, Pender County; and Marina and entrance canal within
31 Carolina Marlin Club property adjacent to Newport River, Carteret County.
- 32 (5) Masonboro ~~Inlet. Gill Inlet: gill~~ nets and seines may not be used:
- 33 (A) ~~Within within~~ 300 feet of either rock jetty; and
- 34 (B) ~~Within within~~ the area beginning 300 feet from the offshore end of the jetties to the
35 Intracoastal Waterway including all the waters of the inlet proper and all the waters of
36 Shinn Creek.

- 1 (6) Atlantic Ocean ~~Fishing Piers. At fishing piers:~~ at a minimum, gill nets and seines may not be used
2 within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been
3 delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it ~~is shall~~
4 be unlawful to fish from vessels or with nets within the larger marked zone.
- 5 (7) Topsail Beach, Pender ~~County. It is County:~~ it shall be unlawful to use gill nets and seines from
6 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end
7 of Topsail Beach.
- 8 (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick ~~County. It is County:~~ it shall be unlawful to
9 use gill nets and seines from September 1 through November 15, except that a maximum of four
10 commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in
11 combination may be used.
- 12 (9) Spooners Creek, Carteret ~~County. It is County:~~ it shall be unlawful to use gill nets and seines
13 between sunset and sunrise in Spooners Creek entrance channel in Bogue Sound, all of Spooners
14 Creek ~~proper proper,~~ and the adjoining tributary canals and channels.

15
16 *History Note:* *Authority G.S. 113-133; 113-134; 113-182; ~~113-221;~~ 143B-289.52;*
17 *Eff. March 1, 1996;*
18 *Amended Eff. October 1, 2004; August 1, 2004; April 1, 2001;*
19 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 18A .0134 is readopted with changes as published in 36:03 NCR 165-166 as follows:

2
3 **15A NCAC 18A .0134 DEFINITIONS**

4 The following definitions shall apply ~~throughout to~~ this Section; however, nothing in this Section shall be construed
5 as expanding or restricting the definitions in G.S. 106-129 and G.S. 106-130:

- 6 (1) "Adulterated" as used in G.S. 106-129 means the following:
- 7 (a) ~~Any-any~~ cooked crustacea or crustacea meat that does not comply with ~~these Rules; the~~
8 Rules in this Section;
- 9 (b) ~~Any-any~~ cooked crustacea or crustacea meat ~~which-that~~ exceeds the bacteriological
10 standards in Rule .0182 of this Section; or
- 11 (c) ~~Any-any~~ cooked crustacea or crustacea meat ~~which-that~~ has been deemed to be an imminent
12 ~~hazard; hazard.~~
- 13 (2) "Code date" means the date conspicuously placed on the container to indicate the date that the
14 product was packed.
- 15 (3) "Cook" means to prepare or treat raw crustacea by heating.
- 16 (4) "Critical control point" means a point, ~~step-step,~~ or procedure in a food process at which a control
17 can be ~~applied, applied~~ and a food safety hazard ~~can-can,~~ as a ~~result-result,~~ be prevented, ~~eliminated~~
18 eliminated, or reduced to acceptable levels.
- 19 (5) "Critical limit" means the maximum or minimum value to which a ~~physical, biological-biological,~~
20 ~~or chemical-chemical, or physical~~ parameter ~~must-shall~~ be controlled at a critical control point to
21 prevent, ~~eliminate-eliminate,~~ or reduce to an acceptable level the occurrence of the identified food
22 safety hazard.
- 23 (6) "Crustacea meat" means the meat of crabs, lobster, ~~shrimp-shrimp,~~ or crayfish.
- 24 (7) "Division" means the Division of ~~Environmental Health or its authorized agent-~~ Marine Fisheries.
- 25 (8) "Easily cleanable" means a surface that is readily accessible and made of such materials, has a finish,
26 and is so fabricated that residues may be effectively removed by normal cleaning methods.
- 27 (8)(9) "Food-contact surface" means the parts of equipment, including auxiliary equipment, ~~which-that~~
28 may be in contact with the food being processed, or ~~which-that~~ may drain into the portion of
29 equipment with which food is in contact.
- 30 (9)(10) "Food safety hazard" means any biological, ~~chemical-chemical,~~ or physical property that may cause
31 a food to be unsafe for human consumption.
- 32 (10)(11) "Foreign" means any place or location outside the United States.
- 33 (11)(12) "Fresh crustacea" means a live, ~~raw-raw,~~ or frozen raw crab, lobster, ~~shrimp-shrimp,~~ or crayfish
34 ~~which-that~~ shows no decomposition.
- 35 (12)(13) "HACCP plan" means a written document that delineates the ~~formal~~ procedures a dealer follows to
36 implement food safety controls.

- 1 ~~(13)~~(14) "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control-control,~~ and
2 monitoring measures initiated by a dealer to identify microbiological, ~~chemical-chemical,~~ or
3 physical food safety hazards ~~which-that~~ are likely to occur in shellfish products produced by the
4 dealer.
- 5 ~~(14)~~(15) "Imminent hazard" means a situation ~~which-that~~ is likely to cause an immediate threat to human life,
6 an immediate threat of serious physical injury, an immediate threat of serious physical adverse
7 health effects, or a serious risk of irreparable damage to the environment if no immediate action is
8 taken.
- 9 ~~(15)~~(16) "Internal temperature" means the temperature of the product as opposed to the ambient temperature.
- 10 ~~(16)~~(17) "Misbranded" as used in G.S. 106-130 means any container of cooked crustacea or crustacea meat
11 ~~which-that~~ is not labeled in compliance with ~~these Rules-the Rules in this Section.~~
- 12 (18) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit
13 volume and is determined from the number of positive results in a series of fermentation tubes.
- 14 ~~(17)~~(19) "Operating season" means the season of the year during which a crustacea product is processed.
- 15 ~~(18)~~(20) "Pasteurization" means the process of heating every particle of crustacea meat in a
16 hermetically-sealed ~~401 by 301 one pound~~ container to a temperature of at least ~~185°F (85°C)-185°~~
17 F (85° C) and holding it continuously at or above this temperature for at least one minute at the
18 geometric center of a container in properly operated equipment-equipment being operated in
19 compliance with the Process Validation Study Report. The term includes any other process ~~which~~
20 that has been found equally effective by the Division.
- 21 ~~(19)~~(21) "Pasteurization date" means a code conspicuously placed on the container to indicate the date that
22 the product was pasteurized.
- 23 (20) ~~"Person" means an individual, corporation, company, association, partnership, unit of government~~
24 ~~or other legal entity.~~
- 25 (22) "Process Validation Study Report" means a report of tests that shows a piece of equipment can
26 produce time-temperature results as required by the Rules of this Section, and the procedures
27 required to achieve such results.
- 28 ~~(21)~~(23) "Processing" means any of the following operations when carried out in conjunction with the
29 cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing,
30 repacking, thermal processing, or pasteurizing.
- 31 ~~(22)~~(24) "Repacker" means a facility ~~which-that~~ repacks cooked crustacea meat into other containers.
- 32 ~~(23)~~(25) "Responsible person" means the individual present in a cooked crustacea facility who is the apparent
33 supervisor of the cooked crustacea facility at the time of the inspection. If no individual is the
34 apparent supervisor, then any employee is the responsible person.
- 35 (26) "Retort" means a pressure vessel used to cook raw crustacea.

1 ~~(24)~~(27) "Sanitize" means a bactericidal treatment by a process which meets the temperature and chemical
2 concentration levels in 15A NCAC 18A .2619. to treat food contact surfaces by a process that is
3 effective in:

- 4 (a) destroying vegetative cells of microorganisms of public health significance;
5 (b) substantially reducing the numbers of other undesirable microorganisms; and
6 (c) not adversely affecting the product or its safety for the consumer.

7 ~~(25)~~ "Standardization report" means a report of tests which show that a piece of equipment can produce
8 ~~time/temperature results as required by these Rules.~~

9 ~~(26)~~(28) "Thermal processing" means the heating of previously cooked crustacea or crustacea meat to a
10 desired temperature for a specified time at the geometric center of a container in properly operated
11 equipment. equipment being operated in compliance with the Process Validation Study Report.

12
13 *History Note:* Authority G.S. 106-129; 106-130; ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52;
14 Eff. October 1, 1992;
15 Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997;
16 Readopted Eff. April 1, 2022.

1 15A NCAC 18A .0153 is readopted with changes as published in 36:03 NCR 168 as follows:

2
3 **15A NCAC 18A .0153 PERSONAL HYGIENE**

4 (a) All employees shall wash their hands with soap and running water before beginning work and again after each
5 interruption. Signs to this effect shall be posted in conspicuous places in the facility by the ~~owner.~~ owner or responsible
6 person.

7 (b) All persons-individuals handling cooked crustacea or crustacea meat shall sanitize their hands before beginning
8 work and again after each interruption.

9 (c) All persons-individuals employed or engaged in the handling, ~~picking-picking,~~ or packing of cooked crustacea or
10 crustacea meat shall wear clean, washable outer clothing.

11 (d) Employees shall not eat food, ~~drink nor drink,~~ or use tobacco in any form in the areas where cooked crustacea or
12 crustacea meat are stored, ~~processed-processed,~~ or handled.

13 (e) Any person-individual known to be a carrier of any disease which-that can be transmitted through the handling of
14 cooked crustacea or crustacea meat or who has an infected wound or open lesion on any exposed portion of the body
15 shall be prohibited from handling cooked crustacea or crustacea meat.

16 (f) Hair restraints shall be worn by all employees who handle cooked crustacea or crustacea meat.

17 (g) The arms of personnel-employees who pick or pack cooked crustacea or crustacea meat shall be bare to the elbow
18 or covered with an arm guard approved by the ~~Division.~~ Division of Marine Fisheries.

19 (h) Personnel-Employees who pick and pack cooked crustacea or crustacea meat shall have ~~clean-clean,~~ short
20 ~~finger-nails,~~ finger-nails free from nail polish and shall not wear jewelry other than easily cleanable rings. The use of
21 absorbent wraps or absorbent finger cots shall not be permitted.

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

24 *Eff. October 1, 1992.*

25 *Readopted Eff. April 1, 2022.*

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

November 2021

Time of Year	Action
February-July 2021	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 26, 2021	MFC votes on approval of Notice of Text for Rulemaking
Oct. 1, 2021	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Nov. 30, 2021	Public comment period held
Oct. 27, 2021	Public hearing held via WebEx
February 2022	MFC votes on approval of permanent rules
April 2022	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
2023 legislative session	Possible effective date of 71 of 109 rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2022	Proposed effective date of 38 rules not subject to legislative review
May 1, 2022	Rulebook supplement available online
June 30, 2022	Readoption deadline for 15A NCAC 03
June 30, 2024	Readoption deadline for 15A NCAC 18A

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

Release: Immediate
Date: Oct. 1, 2021

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

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

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on proposed amendments and re-adoption of 109 rules under a state-mandated periodic review schedule.

Most of the rules pertain to artificial reefs in state ocean waters, shellfish leases, shellfish and crustacea public health protections, and marking requirements for certain commercial fishing gears. Several rules contain only minor technical changes.

Three of the rules would restrict highly efficient fishing gears on the 13 artificial reefs in state ocean waters out to 3 nautical miles, to protect all species of finfish, reducing the likelihood of overexploiting resources on the reefs. Fishing gears considered highly efficient would be all those other than hand line, hook and line, rod and reel, and spearfishing gear. All harvest by spearfishing gear would be restricted to recreational limits. The rules are proposed as a complement to federal restrictions for snapper grouper species that became effective earlier this year for the 30 artificial reefs off North Carolina in the Exclusive Economic Zone, from 3 to 200 nautical miles in the Atlantic Ocean.

A public hearing will be held by web conference on Oct. 27 at 6 p.m. 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.

Members of the public also may 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. Nov. 30, 2021.

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

Other proposed rule changes would:

- Continue supporting the efficiency of the State's shellfish lease and aquaculture program and shellfish production. Specifically, changes would streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases. Also, changes would continue to address user conflicts associated with shellfish leases.
- Clarify the different types of shellfish management areas, including oyster sanctuaries and seed oyster management areas, and delegate proclamation authority to the division director for flexibility to manage areas that are no longer productive, as well as for user conflicts. This authority would also allow for further protection of public health and help prevent resources from being overexploited.
- Strengthen the ability of Marine Patrol to enforce permit and fish dealer requirements for sanitary handling of shellfish and crustacea (crab meat), to prevent illness. Specific requirements for shellfish and crustacea permits, shellfish tagging, and depuration of shellfish are proposed.
- Standardize marking requirements across all rules pertaining to commercial gears, including new requirements for pots and trotlines to have buoys engraved with certain information. The requirements would allow Marine Patrol, fishermen, and boaters to more easily identify gear, potentially reducing user conflicts.
- Correct grammar and punctuation, update agency names, and make other minor technical changes.

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Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2022 and have an earliest effective date of May 1, 2022.

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

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

###

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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Jeremy Ray, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2021 – December 2021

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
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
35:20	04/15/21	03/24/21	04/30/21	06/14/21	06/21/21	07/15/21	08/01/21	01/10/22
35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
35:23	06/01/21	05/10/21	06/16/21	08/02/21	08/20/21	09/16/21	10/01/21	02/26/22
35:24	06/15/21	05/24/21	06/30/21	08/16/21	08/20/21	09/16/21	10/01/21	03/12/22
36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
36:03	08/02/21	07/12/21	08/17/21	10/01/21	10/20/21	11/18/21	12/01/21	04/29/22
36:04	08/16/21	07/26/21	08/31/21	10/15/21	10/20/21	11/18/21	12/01/21	05/13/22
36:05	09/01/21	08/11/21	09/16/21	11/01/21	11/22/21	12/16/21	01/01/22	05/29/22
36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
36:10	11/15/21	10/22/21	11/30/21	01/14/22	01/20/22	02/17/22	03/01/22	08/12/22
36:11	12/01/21	11/05/21	12/16/21	01/31/22	02/21/22	03/17/22	04/01/22	08/28/22
36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

- (4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;
- (5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act or Section 1300 of this Subchapter may be used to satisfy the requirements of this Paragraph;
- (6) Acceptable methods of mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (2) or (3) of this Paragraph may be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation;
- (7) Mitigation for impacts to federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and
- (8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

.0201-.0203, .0301-.0303; 18A .0135, .0302, .0425, and repeal through readoption the rules cited as 15A NCAC 03K .0111; 03P .0304; 18A .0303, .0304 and .0912.

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

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: October 27, 2021

Time: 6:00 p.m.

Location: WebEx Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=ed0e9941d47aa734c7988fa208a056f76>

Event number: 161 493 7847 Event password: 1234 Event phone number: 1-415-655-0003

Reason for Proposed Action:

15A NCAC 03I .0109 RESEARCH SANCTUARIES
15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS
In accordance with G.S. 150B-21.3A, one rule in 15A NCAC 03I is proposed for readoption and two rules in 15A NCAC 03J and 03R are proposed for adoption to restrict highly efficient fishing gears on artificial reefs in State ocean waters to protect all species of finfish, as a complement to the restrictions for artificial reefs in the Exclusive Economic Zone for snapper grouper species. The rules set requirements for research sanctuaries and artificial reefs in State waters, define highly efficient gears, and codify the geographic boundaries of the 13 existing artificial reef sites in State ocean waters. The purpose of the State artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear. All harvest by spearfishing gear would be restricted to recreational limits.

15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

15A NCAC 03O .0205 SHELLFISH LEASE RENEWAL
15A NCAC 03O .0206 SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW

15A NCAC 03O .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES

15A NCAC 03O .0209 ASSIGNMENT OF SHELLFISH LEASES AND FRANCHISES

15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES

15A NCAC 03O .0211 FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c).

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03J .0404; 03R .0119, amend the rules cited as 15A NCAC 03K .0507; 03R .0110, .0111, .0118, readopt with substantive changes the rules cited as 15A NCAC 03I .0101, .0104, .0105, .0109, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0501-.0505; 03K .0101-.0109, .0201, .0202, .0204, .0205, .0207-.0209, .0301, .0302, .0304, .0305, .0401, .0505; 03L .0101-.0103, .0105, .0201-.0205; 03M .0201, .0202, .0204, .0205, .0503; 03N .0104, .0105; 03O .0101-.0105, .0107, .0109-.0111, .0113, .0114, .0203, .0205-.0211, .0301-.0303, .0401-.0406, .0502, .0504; 03P .0101, .0102,

PROPOSED RULES

In accordance with G.S. 150B-21.3A, nine rules 15A NCAC 03 are proposed for readoption and repeal through readoption to further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study completed by the Department of Environmental Quality, Division of Marine Fisheries, and Marine Fisheries Commission. Most rule changes conform to three other recently approved shellfish lease rules. Additional changes are proposed to continue supporting the efficiency of the State's shellfish lease program and production. Specifically, changes seek to streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases.

- 15A NCAC 03I .0113 **BIOLOGICAL SAMPLING**
- 15A NCAC 03I .0118 **DISPOSAL OF EVIDENCE**
- 15A NCAC 03J .0101 **FIXED OR STATIONARY NETS**
- 15A NCAC 03J .0110 **SEINES**
- 15A NCAC 03J .0302 **RECREATIONAL USE OF POTS**
- 15A NCAC 03K .0101 **PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**
- 15A NCAC 03K .0102 **RAKES PROHIBITED**
- 15A NCAC 03K .0105 **RECREATIONAL HARVEST OF SHELLFISH**
- 15A NCAC 03K .0106 **TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT**
- 15A NCAC 03K .0108 **DREDGES AND MECHANICAL METHODS PROHIBITED**
- 15A NCAC 03K .0201 **OYSTER HARVEST MANAGEMENT**
- 15A NCAC 03K .0202 **CULLING REQUIREMENTS FOR OYSTERS**
- 15A NCAC 03K .0204 **MECHANICAL METHODS FOR OYSTERING PROHIBITED**
- 15A NCAC 03K .0207 **OYSTER SIZE AND HARVEST LIMIT EXEMPTIONS**
- 15A NCAC 03K .0301 **SIZE AND HARVEST LIMITS OF CLAMS**
- 15A NCAC 03K .0302 **MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM**
- 15A NCAC 03K .0304 **PROHIBITED TAKING OF CLAMS**
- 15A NCAC 03K .0305 **CLAM SIZE AND HARVEST LIMIT EXEMPTIONS**
- 15A NCAC 03K .0401 **POLLUTED AREA PERMIT REQUIREMENTS**
- 15A NCAC 03K .0505 **SEA SCALLOPS SIZE LIMIT AND TOLERANCE**
- 15A NCAC 03L .0101 **SHRIMP HARVEST RESTRICTIONS**
- 15A NCAC 03L .0102 **WEEKEND SHRIMPING PROHIBITED**
- 15A NCAC 03L .0103 **PROHIBITED NETS, MESH LENGTHS, AND AREAS**
- 15A NCAC 03L .0105 **RECREATIONAL SHRIMP LIMITS**
- 15A NCAC 03M .0201 **STRIPED BASS REQUIREMENTS; GENERAL**

- 15A NCAC 03M .0202 **STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: INTERNAL WATERS**
- 15A NCAC 03M .0204 **STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: ATLANTIC OCEAN**
- 15A NCAC 03M .0205 **STRIPED BASS; PROHIBITED TRAWLING**
- 15A NCAC 03M .0503 **FLOUNDER**
- 15A NCAC 03N .0104 **PROHIBITED GEAR, PRIMARY NURSERY AREAS**
- 15A NCAC 03N .0105 **PROHIBITED GEAR, SECONDARY NURSERY AREAS**
- 15A NCAC 03O .0301 **ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
- 15A NCAC 03O .0302 **AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
- 15A NCAC 03O .0303 **POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
- 15A NCAC 03O .0401 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD**
- 15A NCAC 03O .0402 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS**
- 15A NCAC 03O .0403 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD REVIEW**
- 15A NCAC 03O .0404 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA**
- 15A NCAC 03O .0405 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION DOCUMENTATION**
- 15A NCAC 03O .0406 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL CERTIFICATION**
- In accordance with G.S. 150B-21.3A, 40 rules in 15A NCAC 03 are proposed for readoption that relate to general rules, gear, shellfish, crustacea, finfish, nursery areas, and licenses. The rules have been reviewed to conform to rulemaking requirements and contain clarifying and technical changes.*
- 15A NCAC 03I .0101 **DEFINITIONS**
- 15A NCAC 03I .0104 **INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS**
- 15A NCAC 03I .0114 **RECORDKEEPING REQUIREMENTS**
- 15A NCAC 03J .0105 **PURSE SEINES**
- 15A NCAC 03J .0109 **LONG HAUL AND SWIPE NET REQUIREMENTS**
- 15A NCAC 03J .0305 **TROT LINES (MULTIPLE HOOK OR MULTIPLE BAIT)**
- 15A NCAC 03K .0205 **MARKETING OYSTERS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**
- 15A NCAC 03K .0507 **MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**
- 15A NCAC 03O .0101 **PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**
- 15A NCAC 03O .0102 **PROCEDURES AND REQUIREMENTS TO RENEW LICENSES,**

ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

- 15A NCAC 03O .0103 AUXILIARY VESSELS**
- 15A NCAC 03O .0104 COMMERCIAL UNLOADING OF FISH**
- 15A NCAC 03O .0105 MUSSEL DEALERS**
- 15A NCAC 03O .0107 LICENSE REPLACEMENT AND FEES**
- 15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**
- 15A NCAC 03O .0110 LICENSE REFUNDS**
- 15A NCAC 03O .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS**

15A NCAC 03R .0111 PURSE SEINES PROHIBITED
In accordance with G.S. 150B-21.3A, 18 rules in 15A NCAC 03 are proposed for readoption that relate to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, most changes are conforming and technical in nature. Small benefits are expected related to removing a time requirement for obtaining a tournament license and by broadening the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors at fish dealer locations by including electronic trip tickets. A proposed change to marking requirements for commercial trotlines would likely incur a small financial cost to select fishermen. The change is expected to make trotlines easier to identify and monitor, as well as result in consistent marking requirements across gear types. A small opportunity cost is expected for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture operation permit. The permit consolidates all existing shellfish lease requirements into a single management tool and over half of lease holders already hold the permit. Having all shellfish lease holders subject to the same permit requirement facilitates the tracking and monitoring of shellfish leases overall and the timely handling of potential public health issues, ultimately enhancing the resource.

- 15A NCAC 03J .0301 POTS**
- 15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS**
- 15A NCAC 03L .0202 CRAB TRAWLING**
- 15A NCAC 03L .0203 CRAB DREDGING**
- 15A NCAC 03L .0204 CRAB POTS**
- 15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES**
- 15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES**
- 15A NCAC 03R .0118 CRAB HARVEST MANAGEMENT AREAS**

In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for readoption and amendment that conform rule language with new blue crab and gear management measures approved through Amendment 3 to the N.C. Blue Crab Fishery Management Plan. All of these new measures are already in effect via proclamation following adoption of the plan by the Marine Fisheries Commission in February 2020. The proposed changes codify these existing requirements in permanent rule. A proposed change to marking requirements for pots would likely incur a small financial cost to select fishermen. The change is expected to make pots easier to identify and monitor, as well as result in consistent marking requirements across gear types. The Division

of Marine Fisheries estimates at least half of commercial fishermen using this gear already meet the requirements.

- 15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED**
- 15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS**
- 15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING**
- 15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL**
- 15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER**
- 15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS**
- 15A NCAC 03O .0111 SURRENDER OF LICENSES**
- 15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES**
- 15A NCAC 03O .0502 PERMIT CONDITIONS**
- 15A NCAC 03O .0504 SUSPENSION AND REVOCATION OF PERMITS**
- 15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW**

In accordance with G.S. 150B-21.3A, 11 rules in 15A NCAC 03 are proposed for readoption that conform rules related to permit and license suspensions and revocations to standards of the Administrative Procedure Act (G.S. 150B) and increase clarity of the rules. The majority of changes are conforming and clarifying amendments that incur no impacts. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses; provide significant context to the differences in license and permit suspensions, revocations, and requirements; and provide administrative alternatives to increase overall Division of Marine Fisheries efficiency. Changes proposed to 15A NCAC 03J .0501 for Pound Net Set Permits would delegate narrow proclamation authority to the division director to waive the 30-day pound net set requirement for the southern flounder fishery that has seasons that are now less than 30 days in length, maintaining compliance with the requirements of Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. In all, these proposed changes provide benefits in terms of increased division efficiency and increased protection of marine and estuarine resources.

- 15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES**
- 15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY**
- 15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**
- 15A NCAC 03P .0203 DISPOSITION OF REQUESTS FOR DECLARATORY RULING**
- 15A NCAC 03P .0301 FORM AND CONTENTS OF PETITIONS FOR RULEMAKING**
- 15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION**
- 15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION**

15A NCAC 03P .0304 RECOURSE TO DENIAL OF THE PETITION

In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for readoption and repeal through readoption that conform administrative procedures rules to the requirements of the Administrative Procedure Act, namely G.S. 150B-4, Declaratory rulings, G.S. 150B-20, Petitioning an agency to adopt a rule, and several articles of 150B that address administrative hearings and their judicial review. Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. Additional proposed changes make minor technical and clarifying amendments. Overall, the proposed changes would increase efficiency in contested case hearings, declaratory rulings, and petitions for rulemaking. One proposed change in 15A NCAC 03P .0301 removes the burden for petitioners to submit 15 hard copies of a petition since the majority of petitions are submitted electronically.

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

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

15A NCAC 03K .0107 DEPURATION OF CLAMS AND OYSTERS

15A NCAC 03K .0109 SHELLFISH HARVEST TAGS

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

15A NCAC 03K .0209 OYSTER SANCTUARIES

15A NCAC 18A .0135 PERMITS

15A NCAC 18A .0302 PERMITS

15A NCAC 18A .0303 RELAYING PERMITS

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

15A NCAC 18A .0425 DEALER TAGS

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

In accordance with G.S. 150B-21.3A, 12 rules in 15A NCAC 03 and 18A are proposed for adoption and repeal through readoption that relate to crustacea and shellfish and set specific requirements for shellfish management areas, depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. Session Law 2011-145 abolished the Division of Environmental Health and transferred the Shellfish Sanitation and Recreational Water Quality Section to the Division of Marine Fisheries under a Type I transfer. Prior to this change, the Division of Environmental Health advised the Division of Marine Fisheries on certain matters relating to public health of crustacea and shellfish and the Division of Environmental Health rules bore this out by one division advising the other. Now that the authority for these rules all fall under the Marine Fisheries Commission, amendments are proposed to rules that have overlapping content, including the repeal through readoption of three rules.

In addition, amendments are proposed to increase efficiency for the Division of Marine Fisheries by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Additional proposed amendments to shellfish management areas would broaden the Division of Marine Fisheries director's

proclamation authority to address variable conditions. Changes to crustacea and shellfish permits and dealer tags would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would enhance the protection of public health by strengthening the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit, and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved.

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: November 30, 2021

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.

Rule(s) is automatically subject to legislative review: *S.L. 2017-190 and S.L. 2019-198: 15A NCAC 03I .0104; S.L. 2019-198: 15A NCAC 03I .0105, .0109, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0404, .0501; 03K .0101-.0104, .0107-.0109, .0202, .0204, .0205, .0207-.0209, .0301, .0304, .0305, .0401, .0505, .0507; .03L .0102, .0103, .0105, .0201-.0205; 03M .0201, .0202, .0205, .0503; 03N .0104, .0105; 03O .0101, .0102, .0104, .0109, .0111, .0113, .0114, .0211, .0301-.0303, .0405, .0502, .0504; 18A .0135, .0302 and .0425*

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 (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

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

(1) ~~Enforcement~~ enforcement and management terms:

(a) ~~Commercial Quota.~~ Total "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.

(b) ~~Educational Institution.~~ A "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of ~~Environment and Natural Resources~~ Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.

(c) ~~Internal Coastal Waters or Internal Waters.~~ All "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.

(d) ~~Length of finfish.~~ length of finfish:

(i) ~~Curved fork length.~~ A "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.

(ii) ~~Fork length.~~ A "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

(iii) ~~Pectoral fin curved fork length.~~ A "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the

pectoral fin and the top of the caudal keel.

(iv) ~~Total length.~~ A "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.

(e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.

(f) "Polluted" means any shellfish growing waters:

(i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;

(ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;

(iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;

(iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or

(v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.

(e)(g) ~~Recreational Possession Limit.~~ Restrictions "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

- (f)(h) ~~Recreational Quota. Total~~ "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.
- (g)(i) ~~Regular Closed Oyster Season.~~ "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (h)(j) ~~Scientific Institution. One~~ "Scientific institution" means one of the following entities:
- (i) ~~An~~ an educational institution as defined in this Item;
 - (ii) A state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) A professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in ~~Subitems (h)(i)~~ Sub-items (j)(i) and (ii) of this Item.
- (i) ~~Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.~~
- (2) ~~Fishing Activities:~~ fishing activities:
- (a) ~~Aquaculture operation. An~~ "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine ~~resources~~ resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
- (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) ~~water circulation,~~ utilizing technology not found in the natural environment.
- (v) ~~water circulation, utilizing technology not found in the natural environment.~~
- (b) ~~Attended. Being~~ "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (c) ~~Blue Crab Shedding. The~~ "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
- (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (d) ~~Depuration. Purification~~ "Depuration" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any ~~natural or~~ artificially controlled means.
- (e) ~~Long Haul Operations. Fishing~~ "Long haul operation" means fishing a seine towed between two vessels.
- (f) ~~Peeler Crab. A~~ "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- (g) ~~Possess. Any~~ "Possess" means any actual or constructive holding whether under claim of ownership or not.
- (h) ~~Recreational Purpose. A~~ "Recreational purpose" means a fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
- (i) ~~Shellfish marketing from leases and franchises. The~~ "Shellfish marketing from leases and franchises" means the harvest of oysters, clams, scallops, or mussels from privately held shellfish

- bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (j) ~~Shellfish planting effort on leases and franchises.~~ "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and ~~polluted~~ shellfish stocks from polluted waters and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (k) ~~Shellfish production on leases and franchises.~~ "Shellfish production on leases and franchises" means:
- (i) ~~The~~ the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
- (ii) ~~The~~ the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (l) ~~Swipe Net Operations. Fishing~~ "Swipe net operations" means fishing a seine towed by one vessel.
- (m) ~~Transport. Ship,~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (n) ~~Use. Employ,~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) ~~Gear:~~ gear:
- (a) ~~Bunt Net.~~ The "Bunt net" means the last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (b) ~~Channel Net.~~ A "Channel net" means a net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.
- (c) ~~Commercial Fishing Equipment or Gear.~~ All "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:
- (i) ~~Cast~~ cast nets;
- (ii) ~~Collapsible~~ collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
- (iii) ~~Dip~~ dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
- (iv) ~~Gigs~~ gigs or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
- (v) ~~Hand~~ hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
- (vi) ~~Hook and line and bait and line~~ hook and line, and bait and line equipment other than multiple-hook or multiple-bait trotline;
- (vii) ~~Landing~~ landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
- (viii) ~~Minnow~~ minnow traps when no more than two are in use;
- (ix) ~~Seines~~ seines less than 30 feet in length;
- (x) ~~Spears,~~ spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
- (d) ~~Corkline.~~ The "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
- (e) ~~Dredge.~~ A "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of

- oysters, clams, crabs, scallops, or conchs.
- (f) ~~Fixed or stationary net.~~ A "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (g) ~~Fyke Net.~~ An "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (h) ~~Gill Net.~~ A "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (i) ~~Headrope.~~ The "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
- (j) ~~Hoop Net.~~ An "Hoop net" means an entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (k) ~~Lead.~~ A "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
- (l) ~~Mechanical methods for clamming. Dredges.~~ "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (m) ~~Mechanical methods for oystering. Dredges.~~ "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
- (n) ~~Mesh Length.~~ The "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- (o) ~~Pound Net Set.~~ A "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
- (p) ~~Purse Gill Nets.~~ Any "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (q) ~~Seine.~~ A "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (4) ~~Fish habitat areas.~~ The "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:
- (a) ~~Anadromous fish nursery areas.~~ Those "Anadromous fish nursery areas" means those areas in the riverine and

- estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (b) ~~Anadromous fish spawning areas.~~ Those "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (c) ~~Coral:~~ "Coral" means:
- (i) ~~Fire~~ fire corals and hydrocorals (Class Hydrozoa);
 - (ii) ~~Stony~~ stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
- (d) ~~Intertidal Oyster Bed.~~ A "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (e) ~~Live rock.~~ Living "Live rock" means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
 - (iv) ~~Sponges~~ sponges (Phylum Porifera);
 - (v) ~~Hard~~ hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones,
- (vi) Solengastrea (Class Anthozoa);
 - (vii) Bryozoans (Phylum Bryozoa);
 - (viii) ~~Tube~~ tube worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);
 - (ix) ~~Mussel~~ mussel banks (Phylum Mollusca: Gastropoda); and
 - (x) ~~Acorn~~ acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- (f) ~~Nursery areas.~~ Areas "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) ~~Shellfish producing habitats.~~ Historic "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (h) ~~Strategic Habitat Areas.~~ Locations "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) ~~Submerged aquatic vegetation (SAV) habitat.~~ Submerged "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:

- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
- (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.
- (5) Licenses, licenses, permits, leases and franchises, and record keeping:
- (a) ~~Assignment.~~ Temporary "Assignment" means temporary transfer to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
- (b) ~~Designee.~~ "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (c) ~~For Hire Vessel.~~ As "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in state State waters or when the vessel originates from or returns to a North Carolina port.
- (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- ~~(d)(e)~~ Holder. A "Holder" means a person who has been lawfully issued in ~~his or her~~ the person's name a license, permit, franchise, lease, or assignment.
- ~~(e)(f)~~ Land: "Land" means:
- (i) ~~For~~ for commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (ii) ~~For~~ for purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.

- (iii) ~~For~~ for recreational fishing operations, when fish are retained in possession by the fisherman.
- (f)(g) ~~Licensee.~~ Any "Licensee" means any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (g)(h) ~~Logbook. Paper~~ "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.
- (h)(i) ~~Master. Captain~~ "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
- (i)(j) ~~New fish dealer. Any~~ "New fish dealer" means any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (j)(k) ~~Office of the Division. Physical~~ "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island, and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- (k)(l) ~~Responsible party. Person~~ "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.
- (l)(m) ~~Tournament Organizer. The~~ "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

- (m)(n) ~~Transaction. Act~~ "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- (n)(o) ~~Transfer. Permanent~~ "Transfer" means permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (o)(p) ~~Trip Ticket. Paper~~ "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

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

15A NCAC 03I .0104 INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS

(a) ~~In order to~~ To protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it ~~is~~ shall be unlawful, except for American eels imported from Maryland, Virginia, or South Carolina for use in an aquaculture operation, without first obtaining a ~~permit~~ Permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms from the Fisheries Director or without obtaining live marine ~~and~~ or estuarine organisms from a ~~permit holder; permittee to:~~

- (1) ~~To~~ place into the coastal fishing waters of the ~~state~~ State live marine ~~and~~ or estuarine organisms ~~not native~~ non-native to the ~~state.~~ State. For the purpose of this Rule, this action is an introduction.
- (2) ~~To~~ place into the coastal fishing waters of the ~~state~~ State live marine ~~and~~ or estuarine organisms ~~which that~~ are native but which that originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.
- (3) ~~To~~ hold or maintain any live marine or estuarine ~~organism~~ organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the ~~state~~ State in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in ~~15A NCAC 03I .0101. Rule .0101 of this Section.~~
- (4) ~~To~~ sell for bait any live marine or estuarine ~~organism~~ organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the ~~state.~~ State.

(b) Any person desiring to obtain a Permit to Introduce, ~~Transfer~~ Transfer, or Hold Imported Marine and Estuarine Organisms ~~must make written~~ shall submit a complete application to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769,

Morehead City, NC ~~28557-0769~~. 28557. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500. ~~In order for~~ For the Fisheries Director to determine the level of risk to any native marine or estuarine resource or the environment, the applicant shall ~~provide~~; also provide a certification from a:

- (1) ~~A certification from~~ a pathologist that a sample of 60 organisms from proposed shipments are disease free or a certification from a governmental veterinary service that the organisms to be shipped were produced in an area or facility free of diseases posing a risk to North Carolina's marine or estuarine resources, or their environment, as determined by the Fisheries Director; and
- (2) ~~A certification from~~ a biologist or veterinarian that macroscopic and microscopic examination indicates the shipment contains only those species species, sizes, and quantities identified on the permit application.

(c) The Fisheries Director shall require disinfection, quarantine or destruction of organisms and transfer materials as a condition of the permit, upon finding the importation poses a risk to North Carolina's marine or estuarine resources, or their environment.

(d) The Fisheries Director may hold public meetings prior to granting permits for activities specified in Paragraph (a) of this Rule to gather information concerning risks to native marine or estuarine resources or the environment.

Authority G.S. 113-134; 113-170; 113-182; 143B-289.52; S.L. 2017-190; S.L. 2018-114.

15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED

(a) It ~~is shall be~~ unlawful to leave stakes, anchors, nets, buoys, or floating devices in ~~any coastal fishing waters when~~ Coastal Fishing Waters if such devices are not being employed in commercial fishing operations operations, except as otherwise provided by rule or General Statute.

(b) ~~It shall be unlawful to use or possess fishing equipment in Coastal Fishing Waters in violation of this Section or that contains edible species of fish unfit for human consumption.~~

~~(b)(c) It is shall be~~ unlawful to leave pots in ~~any coastal fishing waters~~ Coastal Fishing Waters for more than five consecutive days, ~~when~~ days if such pots are not being employed in commercial fishing operations, except upon a timely and sufficient showing of hardship as ~~defined~~ set forth in ~~Subparagraph (b)(2)~~ Paragraph (c) of this Rule or as otherwise provided by General Statute. The Fisheries Director may, by proclamation, modify the five-day requirement if necessary due to hurricanes, tropical storms, other severe weather events recognized by the National Weather Service, or other variable conditions pursuant to 15A NCAC 03H .0103.

(4) Agents of the Fisheries Director may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director ~~must~~ shall be removed by the individual ~~utilizing~~ using the pot within five days of

attachment in order to demonstrate that the pot is being employed in commercial fishing operations.

~~(d)(2) For the purposes of Paragraph (b) of this Rule only, purpose of this Rule,~~ a timely and sufficient showing of hardship in a commercial fishing operation shall be ~~written notice given a statement in writing from the owner of the pot or the owner's immediate family, as defined in G.S. 113-168, submitted to the Fisheries Director that a mechanical breakdown of the pot owner's vessel(s) vessel~~ currently registered with the Division of Marine Fisheries ~~under~~ pursuant to G.S. 113-168.6, or the death, ~~illness illness,~~ or incapacity of the owner of the pot or ~~his~~ the owner's immediate family, ~~as defined in G.S. 113-168,~~ family prevented or will prevent employing such pots in commercial fishing operations for more than five consecutive days. ~~The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days without being employed in fishing operations, and shall state, in addition to the following, Statements and supporting documentation shall be mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Mailing a statement does not automatically exempt a fisherman from the requirements of this Rule. The statement shall specify the number and specific location of the pots, and the date on by which the pots will be employed in commercial fishing operations or removed from coastal fishing waters: Coastal Fishing Waters, and:~~

~~(A)(1) in the case of a mechanical breakdown, the notice shall state the commercial fishing vessel registration~~ Commercial Fishing Vessel Registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, and description of the arrangements being made to repair the vessel or a copy of the work order showing the name, address address, and phone number of the repair facility; or

~~(B)(2) in the case of the death, illness illness, or incapacity of the owner of the pot or his the owner's immediate family, the notice shall state the name of the owner or immediate family member, member and either the date of death, the date and nature death or the date of the illness or incapacity. The Fisheries Director may require a doctor's verification of that the illness or incapacity: incapacity occurred.~~

~~(e)(3) The Fisheries Director may, by proclamation, modify the five day requirement, if necessary due to hurricanes, severe weather or other variable conditions. Failure It shall be unlawful to fail to employ in commercial fishing operations or remove from coastal fishing waters Coastal Fishing Waters all pots for which notice of a hardship request is received granted under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule: hardship.~~

(e) It is unlawful to set or have any fishing equipment in coastal fishing waters in violation of this Section or which contains edible species of fish unfit for human consumption.

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

**15A NCAC 03I .0109 ~~ARTIFICIAL REEFS AND~~
RESEARCH SANCTUARIES**

(a) The Fisheries Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment in and around any ~~artificial reef or~~ research sanctuary. Any closure or restriction shall be for no more than one year, subject to renewal at the discretion of the Fisheries Director. ~~is subject to the following conditions:~~

- (1) ~~Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.~~
- (2) ~~Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of the Fisheries Director.~~
- (3) ~~The economic effect of the closure or restriction on fishing interests with respect to the size and location of the area and the nature of the equipment affected shall be considered before such closure is made and findings shall be made in writing which findings shall be available for public inspection at the office of Division of Marine Fisheries in Morehead City.~~

(b) It ~~is~~ shall be unlawful to engage in any fishing activity, use any equipment, or conduct any other operation ~~which that~~ has been prohibited by proclamation issued under this authority.

Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING

It ~~is~~ shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or ~~his~~ the Fisheries Director's agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from fish in the licensee's possession. Such data shall include, but is not limited to, species identification, length, weight, age, sex, number, area of catch, harvest method, and quantity of catch.

Authority G.S. 113-134; 113-170.3; 113-170.4; 113-174.1; 113-182; 143B-289.52.

**15A NCAC 03I .0114 RECORDKEEPING
REQUIREMENTS**

(a) It ~~is~~ shall be unlawful for a licensed fish dealer:

- (1) ~~To~~ to fail to complete accurately and legibly all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;
- (2) ~~To~~ to fail to provide to the Division of Marine Fisheries a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;

(3) ~~To~~ to fail to make paper copies or electronic copies of trip tickets available at the dealer location for inspection by Marine ~~Patrol~~ Fisheries inspectors;

(4) ~~To~~ to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:

- (A) ~~Initiate~~ initiate electronic file transfer of trip tickets; and
- (B) ~~Continue~~ continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;

(5) ~~To~~ to fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and

(6) ~~To~~ to fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic ~~files~~ files, and accounts for a period of not less than three years.

(b) It ~~is~~ shall be unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:

- (1) ~~A~~ a current and valid license or permit to sell the type of fish being offered and if a vessel is used, the ~~commercial fishing vessel registration;~~ Commercial Fishing Vessel Registration; and
- (2) ~~Complete~~ complete and accurate information on harvest method and area of catch and other information required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

(c) It ~~is~~ shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing ~~thereon the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped.~~ the following items:

- (1) name of the consignee;
- (2) name of the shipper;
- (3) date of the shipment;
- (4) name of fish being shipped; and
- (5) quantity of each fish being shipped.

In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers are exempt from this ~~Paragraph of this Rule.~~ Paragraph.

(d) It ~~is~~ shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the ~~record-keeping~~ recordkeeping requirements in G.S. 113-168.2(i).

(e) It ~~is~~ shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine ~~Patrol~~ Fisheries inspectors or other ~~agent~~ agents of the Fisheries Director written documentation of purchase showing ~~thereon the name of the licensed dealer, name of the purchaser,~~ date of the purchase, and the quantity of each species purchased. the following items:

- (1) name of the licensed fish dealer;
- (2) name of the purchaser;
- (3) date of the purchase;
- (4) name of fish purchased; and
- (5) quantity of each fish purchased.

(f) It ~~is~~ shall be unlawful for a holder of a Fish ~~Dealer's Dealer~~ License to have fish in possession at a licensed fish dealer without written documentation from a licensed fish dealer or a completed North Carolina ~~Marine Fisheries Trip Ticket~~ trip ticket to show the quantity and origin of all fish.

Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 113-182; 143B-289.52.

15A NCAC 03I .0118 DISPOSAL OF EVIDENCE

It ~~is~~ shall be unlawful for any person to dispose of ~~fish or fish,~~ parts thereof, of fish, fishing equipment or gear, or other matter ~~in any manner,~~ preparatory to, during, or subsequent to the taking of fish after any communication or signal from an inspector, or after the approach of an inspector or an enforcement vessel.

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

SUBCHAPTER ~~3J~~ 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0101 FIXED OR STATIONARY NETS

It ~~is~~ shall be unlawful to use or set fixed or stationary ~~nets;~~ nets for any of the following:

- (1) ~~In~~ in the channel of the Intracoastal ~~Waterway or in any other location where it may constitute a hazard to navigation;~~ Waterway;
- (2) ~~So as to block more than two-thirds of any a~~ So as to block more than two-thirds of any a natural or manmade waterway, sound, river, bay, creek, ~~inlet~~ inlet, or ~~any~~ any other body of water;
- (3) ~~In~~ in the middle third of ~~any marked a~~ any marked a navigation ~~channel;~~ channel marked by State or federal agencies; or
- (4) ~~In the channel third of the following rivers: Roanoke, Cashie, Middle, Eastmost, Chowan, Little, Perquimans, Pasquotank, North, Alligator, Pungo, Pamlico, and Yeopim.~~ in a location where it may interfere with navigation.

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

15A NCAC 03J .0105 PURSE SEINES

(a) It ~~is~~ shall be unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard ~~shad~~ shad, or ~~pinfish,~~ as further restricted by Paragraphs (b) and (c) of this Rule. pinfish.

(b) It ~~is~~ shall be unlawful to ~~take menhaden, Atlantic thread herring, gizzard shad or pinfish with~~ use a purse seine in violation of any of the following limitations: accordance with the following:

- (1) ~~In~~ in the Atlantic Ocean ~~during the periods and within an area as~~ described:
 - (A) by Session Law 2012-190; and
 - (A)(B) ~~In~~ in 15A NCAC 03R ~~0111, .0111.~~
 - (B) By Session Law 2007-320.
- (2) ~~Except except as provided in Subparagraph (5) of this Paragraph,~~ Paragraph (c) of this Rule, between January 16 and May 14 in:
 - (A) Internal waters, internal waters; and
 - (B) the Atlantic Ocean within one mile of shore.
- (3) ~~Between~~ between January 16 and March 31 in Core Sound.
- (4) ~~In internal waters except in:~~
 - (A) Pamlico Sound;
 - (B) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
 - (C) Neuse River east of a line from Wilkinson Point to Cherry Point;
 - (D) Adams Creek;
 - (E) Core Sound and its tributaries;
 - (F) Back Sound, the Straits, and North river;
 - (G) Newport River;
 - (H) North River, and
 - (I) Bogue Sound.

(4) from beyond one mile of shore in the Atlantic Ocean and transported to port between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day.

(5) from beyond one mile of shore in the Atlantic Ocean and transported to port between the hours of sunrise and sunset on the following holidays:

- (A) Memorial Day;
- (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and
- (C) Labor Day.

(5)(c) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (4) of this Paragraph (d) of this Rule between April 1 and May 14, and may impose any ~~or all~~ of the following restrictions:

- (1) specify time;

- (2) specify area;
- (A)(3) Specify ~~specify~~ means and methods by area which may be employed in the taking; methods;
- (4) specify record keeping requirements;
- (5) specify season; and
- (B)(6) Limit the quantity; and ~~specify quantity.~~
- (C) Require submission of statistical and biological data.

Authority G.S. 113-134; 113-182; 113-187; 113-221.1; 143B-289.52.

15A NCAC 03J .0109 ~~LONG-HAUL FISHING OPERATIONS, IDENTIFICATION LONG HAUL AND SWIPE NET REQUIREMENTS~~

It is ~~shall~~ be unlawful to ~~to~~ ~~or~~ ~~pull~~ use a net in a ~~long haul long haul~~ or swipe net fishing ~~excluding operations with nets made entirely of monofilament and having a mesh length of three inches or greater;~~ operation:

(d) The internal waters specified in Paragraph (c) of this Rule are as follows:

- (1) Pamlico Sound;
- (2) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
- (3) Neuse River east of a line from Wilkinson Point to Cherry Point;
- (4) Adams Creek;
- (5) Core Sound and its tributaries;
- (6) Back Sound, the Straits, and North River;
- (7) Newport River;
- (8) North River; and
- (9) Bogue Sound.

(1) ~~Without~~ without a floating buoy that shall be international orange, no less than five inches in diameter, and no less than 11 inches in length attached a minimum of every 100 yards along the cork line. ~~The buoy shall be international orange and shall be no less than five inches in diameter and no less than 11 inches in length; and line;~~

(2) ~~Without~~ without a flag, flag that shall be square in shape, international orange in color, and at least 24 inches by 24 inches in size, size flying in the rigging so as to be visible when approaching the vessel from any ~~direction.~~ direction; and

(3) ~~In in the internal coastal waters~~ Internal Coastal Waters south and west of a line beginning on the west shore of Pamlico Sound at Bluff Point at a point 35° 19.5333' N – 76° 09.3333' W; running southeasterly to Ocracoke Island to a point 35° 08.0000' N – 75° 55.0000' W, W; without escape panels as follows:

(e)(e) ~~Menhaden, Atlantic thread herring, gizzard shad shad, or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law 2007-320 2012-190 and Subparagraphs (b)(5) and (b)(6) of this Rule, and except as prohibited below:~~

- (1) ~~It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.~~
- (2) ~~It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between the hours of sunrise and sunset on the following holidays:~~
 - (A) ~~Memorial Day;~~
 - (B) ~~Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and~~
 - (C) ~~Labor Day.~~

(a) ~~For~~ for long haul operations, two panels four feet deep and six feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed.~~ bailed, with panels shall be in the water while fish are harvested; harvested;

(b) ~~For~~ for swipe net operations, two panels three feet deep and five feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed.~~ bailed, with panels shall be in the water while fish are harvested; harvested;

(c) ~~The~~ the upper edge of one panel ~~shall be~~ installed within 12 to 24 inches of the float line and the lower edge of the other panel ~~shall be~~ installed within 12 to 24 inches of the lead ~~line.~~ line; and

(d) ~~The~~ panels ~~shall be~~ constructed of unobstructed trawl rings with ~~an a~~ minimum inside diameter ~~no less than of one and nine-sixteenth inches (1 9/16").~~ inches, with the rings shall be fastened together at a maximum of four points per ring.

(f)(f) ~~It is shall be~~ unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:

- (1) ~~Immediately within two hours of the spill, notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries Communications Center of such spill; the spill by phone at 800-682-2632 or 252-726-7021; and~~
- (2) ~~Report report~~ report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of spill clean-up on the circumstances associated with each spill and costs of its clean-up.

Authority G.S. 113-134; 113-182; ~~143B-289.4~~; 143B-289.52.

15A NCAC 03J .0110 SEINES

It ~~is shall be~~ unlawful to use seines 30 feet or over in length for recreational purposes unless the net is marked by attaching to the corkline ~~one~~ a floating buoy, any shade of hot pink in color, ~~which~~ color. 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 ~~owner~~ gear owner's last name and initials shall always be identified on the attached buoy using an engraved buoys buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used,~~ one of the following:

- (1) ~~Gear gear~~ gear owner's current motor boat registration number; or
- (2) ~~Owner's owner's~~ owner's U.S. vessel documentation name.

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

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

15A NCAC 03J .0301 POTS

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

- (1) ~~In Coastal Fishing in Internal Waters from December 1 through May 31, except that that:~~
 - (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 15 1 through February 7. 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 the January 15 through February 7 this removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots.
 - (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) ~~From in Internal Waters from June 1 through November 30, north and east of the Highway 58 Bridge at Emerald Isle:~~ 30 in the Northern Region designated in 15A NCAC 03R .0118(1):
 - (A) ~~In in~~ in areas described in 15A NCAC 03R ~~.0107(a); .0107(a).~~
 - (B) ~~To to~~ to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for

~~or and~~ designate the areas described in 15A NCAC 03R ~~.0107(b); .0107(b)~~ or any part thereof, for the use of pots.

- (3) ~~From in Internal Waters from~~ May 1 through November 30 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation. 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.

~~The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.~~

- (b) It ~~is 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 ~~is shall be~~ unlawful to use pots in a commercial fishing ~~operation,~~ 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. ~~that~~ Buoys shall be of solid foam or other solid buoyant material ~~and~~ no less than five inches in diameter and no less than five inches in length. ~~Buoys may be of any color except yellow or hot pink or any combination of colors that include yellow or hot pink.~~ The owner gear owner's last name and initials shall always be identified on the attached buoy by using an engraved buoys buoy or by attaching engraved metal or plastic tags ~~attached~~ to the buoy. ~~The If a vessel is used,~~ the identification shall also include one of the following:
 - (1) gear owner's current ~~motorboat~~ motor boat registration number; or
 - (2) gear owner's U.S. vessel documentation ~~name;~~ or name.
 - (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 ~~is 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 ~~is shall be~~ unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half ~~inch,~~ inch, ~~except until January 1, 2017 eel pots of any mesh length with an escape panel that is at least four inches square with a mesh length of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots shall be allowed.~~ inch.
- (g) ~~It is~~ 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 ~~two~~ three unobstructed escape rings that are at least two and ~~five sixteenths~~ five-sixteenths inches inside diameter and; ~~and~~ located in the opposite outside

panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:

- ~~(1)~~ unbaited pots;
- ~~(2)~~ pots baited with a male crab; and
- ~~(3)~~ pots set in areas and during time periods described in 15A NCAC 03R .0118.
- (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, ~~exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:~~ restrictions for pots:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify requirements for a commercial fishing operation or for recreational purposes;
- (5) specify record keeping and reporting requirements;
- ~~(4)(6)~~ specify seasons; and season, including a closed season for removal of all pots from Internal Waters;
- (7) specify species; and
- ~~(5)(8)~~ specify quantity.

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

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

(l) It is shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" ~~are defined as~~ 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.

15A NCAC 03J .0302 RECREATIONAL USE OF POTS

(a) It is shall be unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching ~~one~~ a floating buoy, any shade of hot pink in ~~color, which~~ color. 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 ~~owner gear~~ owner's last name and initials shall always be identified on the attached buoy using an engraved ~~buoys~~ buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such If a vessel is used, the identification shall also include the owner's last name and initials and if a vessel is used,~~ one of the following:

- (1) ~~Gear gear~~ gear owner's current motor boat registration ~~number, number;~~ number; or
- (2) ~~Owner's~~ gear owner's U.S. vessel documentation name.

(b) It is shall be unlawful for a person to use more than one crab pot attached to the shore along privately owned land or to a privately owned pier without possessing a valid Recreational Commercial Gear License.

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

15A NCAC 03J .0305 TROTTLINES (MULTIPLE HOOK OR MULTIPLE BAIT)

(a) It is shall be unlawful to use multiple hook or multiple bait trotlines for recreational purposes unless ~~such trotlines are~~ each multiple hook or multiple bait trotline is marked by attaching to them at each end ~~one~~ a floating buoy, any shade of hot pink in ~~color, which~~ color. 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 ~~owner gear~~ owner's last name and initials shall always be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. ~~Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used,~~ one of the following:

- (1) ~~Gear gear~~ gear owner's current motor boat registration ~~number, number;~~ number; or
- (2) ~~Owner's~~ gear owner's U.S. vessel documentation name.

(b) It shall be unlawful to use multiple hook or multiple bait trotlines in a commercial fishing operation unless each multiple hook or multiple bait trotline is marked by attaching to them at each end 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 shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

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

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

SECTION .0400 - FISHING GEAR

15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

- (a) For the purpose of this Rule:
 - (1) "hand line" shall mean fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.
 - (2) "hook and line" shall mean one or more hooks attached to one or more lines and shall include rod and reel, a fishing rod designed to be hand-held with a manually or electrically operated reel attached.
 - (3) "spearfishing gear" shall mean spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
- (b) It shall be unlawful to use fishing gear in Ocean Artificial Reefs designated in 15A NCAC 03R .0119 except hand line, hook and line, and spearfishing gear, and except as further limited in accordance with Paragraph (d) of this Rule.
- (c) It shall be unlawful to possess finfish taken with spearfishing gear in excess of a recreational limit within the boundaries of a designated Ocean Artificial Reef.
- (d) The Fisheries Director may, by proclamation, close the areas designated in 15A NCAC 03R .0119 to the use of specific fishing gear, including the gears otherwise allowed in Paragraph (b) of this Rule, based on biological impacts or user conflicts.
- (e) The Fisheries Director may, by proclamation, designate and modify Ocean Artificial Reefs in Coastal Fishing Waters of the Atlantic Ocean, based on biological impacts or variable spatial distribution, including shifted artificial reef material.

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

SECTION .0500 – POUND NETS

15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

- (a) For the purpose of this Section the following terms are hereby defined: The following definitions shall apply to this Section:
 - (1) Pound Net Set Permit. A Division authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.
 - (2) Permit period. One year from the date of issuance of a new or renewal pound net set permit.
 - (3)(1) Deployed pound net. Setting "Deployed pound net" means setting of any part of a pound net, net except for a location identification stake or or, for a pound net used in the Atlantic Ocean, a location identification buoy placed at each end of a proposed new location.
 - (2) "Flounder pound net" means a pound net set that produces a catch consisting of 50 percent

- ~~(4)(3)~~ Operational pound net set. A "Operational pound net set" means a pound net set as defined in 15A NCAC 03I .0101 and deployed according to rules and permit conditions with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish.
- (4) "Permit period" means from the date of issuance of a new or renewal Pound Net Set Permit to the expiration date.
- (5) "Pound Net Set Permit" means a Division of Marine Fisheries authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.
- ~~(5)~~ Flounder pound net. A pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.
- (6) Shrimp pound net. A "Shrimp pound net" means a pound net set with all pounds (holding pen) constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal to two inches.
- (b) It is shall be unlawful for a pound net used in a commercial fishing operation to:
 - (1) Be be deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.
 - (2) Fail fail to be operational for a minimum of 30 consecutive days during the pound net set permit period unless Pound Net Set Permit period, except the Fisheries Director may, by proclamation, waive this requirement if a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met, met or for compliance with the N.C. Southern Flounder Fishery Management Plan.
- (c) It is shall be unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:
 - (1) Have have the permittee's identification legibly printed on a sign no less than six inches square, securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow buoy, which buoy that shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. The identification on signs or buoys shall include the Pound Net

Set Permit number and the permittee's last name and initials.

- (2) ~~Have~~ have yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
- (3) ~~Have~~ have a marked navigational opening at least 25 feet wide at the end of every third pound. The opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.

If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(d) It ~~is~~ shall be unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 030 .0302 ~~(a)(8)~~ .0302(a)(8) in coastal fishing waters unless the shrimp pound net is:

- (1) ~~Marked~~ marked by attaching to the offshore lead, ~~one~~ a floating buoy, any shade of hot pink in ~~color, which is~~ color. 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 ~~owner gear owner's~~ last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. ~~The~~ If a vessel is used, the identification shall also include ~~owner's last name and initials~~ and if a vessel is used, one of the following:
 - (A) ~~Gear~~ gear owner's current motor boat registration number; or
 - (B) ~~Owner's~~ gear owner's U.S. vessel documentation name.
- (2) ~~Set~~ set a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational permitted shrimp pound net set.

(e) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any ~~or all~~ of the following requirements ~~or restrictions~~ on the use of escape panels:
 - (A) ~~Specify~~ specify size, number, and ~~location.~~ location;
 - (B) ~~Specify~~ specify mesh length, but not more than six ~~inches.~~ inches;
 - (C) ~~Specify~~ specify time or ~~season.~~ season; and
 - (D) ~~Specify~~ specify areas.

- (2) It ~~is~~ shall be unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

(f) ~~During 1 December through 1 February the~~ The Fisheries Director shall by proclamation establish time periods between December 1 through February 1 and areas where it ~~is~~ shall be unlawful to fail to remove all nets from pound net sets in commercial fishing operations in internal coastal waters.

(g) It ~~is~~ shall be unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

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

15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING

(a) All initial, ~~renewal~~ renewal, or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the ~~rules~~ requirements governing all permits as provided in 15A NCAC 030 .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 030 .0501.

(b) Applicants for Pound Net Set permits shall meet the following eligibility requirements as determined by the Fisheries Director:

- (1) ~~Applicant~~ the applicant is an individual and not a corporation, partnership, organization or other entity;
- (2) ~~Applicant~~ the applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.
- (3) ~~Applicant~~ the applicant has in the past complied with all permit conditions, ~~rules~~ rules, and laws related to pound nets.
- (4) ~~Applicant~~ the applicant holds proper valid ~~license(s) and permit(s)~~ licenses and permits necessary to fish the type of net indicated in the application.

(c) Applications for Pound Net Set permits shall include the following:

- (1) ~~A~~ a base map provided by the Division of Marine Fisheries indicating the proposed set location including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location.

- (2) ~~Declaration~~ declaration of the type of pound net that will be deployed at the site. One of the following pound net fisheries shall be specified:
- (A) ~~Flounder~~ flounder pound net set;
 - (B) ~~Bait~~ bait pound net set;
 - (C) ~~Shrimp~~ shrimp pound net set;
 - (D) ~~Blue~~ blue crab pound net set; or
 - (E) ~~Other~~ other finfish pound net set.

(d) For proposed new ~~location(s);~~ locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application is shall be deemed denied. The applicant shall be notified of denial in writing. Approval is shall be conditional based upon the applicant's continuing compliance with eligibility requirements set out in Paragraph (e) of this Rule and specific conditions contained on the Pound Net Set Permit. The applicant may contest final decision to approve or deny the denial of a Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings, under G.S. 150B-23.

(e) In order for a site to be deemed suitable for a pound net set, the proposed set location shall meet the following criteria as determined by the Fisheries Director:

- (1) ~~The~~ the proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with ~~public~~ navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J .0101 and .0102;
- (2) ~~The~~ the proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (3) ~~The~~ the proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area. Flounder or other finfish pound net sets will be a minimum of 1,000 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets; except
 - (A) in Chowan River as referenced in 15A NCAC 03J .0203; and
 - (B) for renewal of pound net sets permitted prior to January 1, 2003;
- (4) ~~The~~ the proposed shrimp or blue crab pound net set will be a minimum of 300 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets;
- (5) ~~The~~ the proposed pound net set is not located in Core Sound in areas designated in 15A NCAC

03R .0113 except that only those Pound Net Set ~~Permits~~ permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule; and

- (6) ~~Issuance~~ issuance of the proposed Pound Net Set Permit is in compliance with management measures adopted in fishery management plans.

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

15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL

An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing ~~permit,~~ permit and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set ~~Permit.~~ Permit, as set forth in the rules of this Section. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

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

15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER

It is shall be unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. The application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters ~~testamentary~~ testamentary, and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the ~~permit(s)~~ permit or permits to eligible immediate family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

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

15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS

- (a) It is shall be unlawful for a ~~permittee;~~ permittee to:
 - (1) ~~To~~ fail to notify the Division of Marine Fisheries ~~Marine Patrol~~ Communications

Center by phone at 800-682-2632 or 252-726-7021 within 72 hours by phone of:

- (A) ~~Of~~ an operational pound net set. Notification shall include the name of permittee, type of net, Pound Net Set Permit number, county where located, a specific location site, and how many pounds are in the set; and
- (B) ~~Of~~ a change to the type of net being set at the permitted site.
- (2) ~~To~~ make false notifications.
- (3) ~~To~~ fail to render the pound net set inoperable during any closed season for the type of fishery for which the pound net is permitted.

Failure to comply with this Paragraph is shall be grounds for the Fisheries Director to revoke any Pound Net Set Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.

- (b) Pound net sets ~~are~~ shall be subject to inspection at all times.
- (c) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.
- (d) It is shall be unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.

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

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

SECTION .0100 – SHELLFISH, GENERAL

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

(a) It is shall be unlawful to possess, sell, or take oysters, ~~clams~~ clams, or mussels from areas ~~which that~~ that have been designated as ~~prohibited (polluted) polluted~~ polluted by proclamation by the Fisheries Director except as provided in ~~15A NCAC 03K Rules .0103, .0104, .0107, and .0401. .0401~~ of this Subchapter. The Fisheries Director shall issue such shellfish polluted area proclamations ~~upon notice by the Division of Environmental Health that duly adopted if~~ if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area ~~upon notification from the Division of Environmental Health that duly adopted by proclamation if~~ in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252- (252) 726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, ~~scallops~~ scallops, and mussels ~~in order~~ in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.

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

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221; 113-221.1; 143B-289.52.~~

15A NCAC 03K .0102 RAKES PROHIBITED RAKES

It is shall be unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

- (1) oysters or scallops; or
- (2) clams in any live oyster bed, or in any established bed of submerged aquatic vegetation as ~~described~~ defined in 15A NCAC 03I ~~.0101, .0101~~ or in any established bed of salt water cordgrass (Spartina alterniflora) alterniflora that may exist together or separately.

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

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

~~(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:~~

- (1) ~~conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;~~
- (2) ~~shellfish populations or shellfish enhancement projects that may:~~
 - (A) ~~produce commercial quantities of shellfish at 10 bushels or more per acre;~~
 - (B) ~~produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or~~
 - (C) ~~serve as sanctuaries to increase spawning and disease resistance or to prevent predation.~~

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(c) It is shall be~~ unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish ~~or Seed~~ Seed Management ~~area~~ Area. ~~These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal~~

~~or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~
 (e)(d) It is shall be unlawful to take shellfish from any Shellfish Management Area which that has been closed and posted, in accordance with Paragraph (b) of this Rule, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed. impose any of the following requirements based on biological impacts or user conflicts:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;
- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

Authority G.S. 113-134; 113-182; 113-204; 113-221; 113.221.1; 143B-289.52.

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

(a) ~~It is shall be unlawful to take oysters or clams shellfish from prohibited (polluted) polluted public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. Lease Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.

(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.

~~(b)(d) The season for relaying elams shall be between April 1 and May 15 and the season for relaying oysters shellfish shall be for may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:~~

- (1) the status of oyster shellfish resources available for harvest from public bottom and bottom;
- (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
- (3) market factors affecting sale of oysters shellfish from public bottom which will assist in determining the statewide closure date bottom; and
- (4) manpower available availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.

~~(e) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall not apply.~~

~~(d)(e) The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds lease or franchise for which the owner has obtained a permit to relay oysters and clams shellfish from prohibited (polluted) polluted public waters, waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.~~

Authority G.S. 113-134; 113-182; 113-203; 113-221; 113-221.1; 143B-289.52.

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

(a) ~~It is shall be unlawful to take oysters or clams from public bottoms bottom on Sundays, and scallops from public bottoms bottom on Saturdays and Sundays except:~~

- (1) during open seasons, seasons; and
- (2) for recreational purposes.

(b) ~~It is shall be unlawful to possess, for recreational purposes, more than:~~

- (1) 10 conchs or whelks per person per day, not to exceed 20 conchs or whelks per vessel per day, and day;
- (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per day, day; and
- (3) 100 clams per person per day, not to exceed 200 clams per vessel per day.

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

15A NCAC 03K .0106 TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT

(a) ~~It is shall be unlawful to take oysters or clams between the hours of sunset and sunrise on any day.~~

(b) ~~It is shall be unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on Sunday Sundays or between sunset and sunrise on any day except that in New Hanover, Pender Pender, and Brunswick Counties, counties, oysters and clams may be unloaded until two hours after sunset.~~

(c) Oysters and clams taken on Sunday Sundays from public bottom under the provisions of 15A NCAC 03K Rule .0105 of this Section or from shellfish leases and franchises pursuant to G.S. 113-208 are shall be exempt from Paragraph (b) of this Rule.

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

15A NCAC 03K .0107 DEPURATION OF SHELLFISH CLAMS AND OYSTERS

(a) ~~It is shall be unlawful to take clams or oysters from the polluted public or private prohibited (polluted) waters or franchises of the state State for the purpose of depuration except when the harvest will utilize shellfish clams or oysters that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division~~

of Marine Fisheries or the Division of Environmental Health Fisheries. For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.

(b) The Fisheries Director, may, by proclamation, impose any ~~or~~ ~~all~~ of the following restrictions on the harvest of clams or oysters for depuration:

- (1) ~~Specify~~ specify species;
- (2) ~~Specify areas~~ specify areas, except harvest will shall not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) ~~Specify~~ specify harvest days;
- (4) ~~Specify time period;~~ specify time;
- (5) ~~Specify~~ specify quantity or size;
- (6) specify quantity;
- ~~(6)~~(7) ~~Specify~~ specify harvest methods; and
- ~~(7)~~(8) ~~Specify~~ specify record keeping requirements.

(c) Depuration permits:

- (1) ~~It is~~ it shall be unlawful for individuals to harvest clams or oysters from ~~prohibited~~ ~~(polluted)~~ polluted waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of ~~Marine Fisheries and Division of Environmental Health~~ setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina ~~Clam or Oyster Dealers~~ clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits ~~must~~ shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
- (2) ~~It~~ in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, ~~location~~ location, and telephone number of the depuration operation where the shellfish will be depurated.
- (3) ~~Clam or Oyster Dealers~~ clam or oyster dealers desiring to obtain ~~prohibited~~ ~~(polluted)~~ polluted clams or oysters from polluted waters for the purpose of depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.

(d) Transport of clams or oysters for depuration:

- (1) ~~Clams~~ clams or oysters harvested from ~~prohibited~~ ~~(polluted)~~ polluted waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.
- (2) ~~Clams~~ clams or oysters harvested from ~~prohibited~~ ~~(polluted)~~ polluted waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under

the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.

(e) It is shall be unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.

~~(f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

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

**15A NCAC 03K .0108 ~~DREDGES/MECHANICAL~~
DREDGES AND MECHANICAL METHODS
PROHIBITED**

(a) It ~~shall be~~ shall be unlawful to use mechanical methods, except ~~mechanical methods for oystering and clamming~~ mechanical methods for clamming and mechanical methods for oystering as defined in 15A NCAC 03I .0101, to take shellfish.

(b) It ~~is~~ shall be unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in ~~15A NCAC 03K Rules .0201, .0204, .0302, 0304, .0304, .0404, .0501, and .0503;~~ .0503 of this Subchapter:

- (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*); ~~alterniflora~~ alterniflora that may exist together or separately;
- (2) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for ~~Oysters and Clams~~ Shellfish on Shellfish Leases and Franchises;
- (3) in areas designated in ~~15A NCAC 03K Rule .0204 of this Subchapter and 15A NCAC 03R .0103;~~ and
- (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and ~~03K Rules .0201, .0302, .0404, .0501, and .0503;~~ .0503 of this Subchapter.

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

**15A NCAC 03K .0109 SHELLFISH HARVESTER
HARVEST AND DEALER TAGS**

~~It is~~ Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, ~~clams~~ clams, or mussels. Tags shall be affixed by the harvester ~~or dealer~~ and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90

days. It shall be unlawful for the tag to fail to ~~and shall~~ meet the following criteria:

- (1) ~~Tags harvest tags~~ shall be identified as harvest tags. They shall be durable for at least 90 days, ~~water resistant, waterproof,~~ and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) ~~Tags harvest tags~~ shall be securely fastened to ~~the outside of~~ each container in which shellstock is transported. A ~~harvester or dealer harvest tag~~ shall be remain securely fastened to ~~the outside of~~ each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. ~~location except, bulk shipments of shellfish in one container and from the same source may have one tag with all required information attached.~~ Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required harvest and dealer information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) ~~Tags shall be attached to all shellfish stored at a dealer location.~~ bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) ~~Tags tags~~ shall contain legible information arranged in the specific order as follows:
 - (a) ~~The the~~ harvester's name, ~~address address, and shellfish license or standard or retired standard commercial fishing license~~ Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement ~~number number;~~
 - (b) ~~The the~~ date of ~~harvest.~~ harvest;
 - (c) ~~The the~~ most precise ~~description~~ identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay) ~~that can be easily located by maps and charts.~~ Bay), including at a minimum the State's two initials

"N.C." and the growing area designation;

- (d) the shellfish lease or franchise number, if applicable;
- ~~(d)(e)~~ Type type and quantity of shellfish shellfish;
- ~~(e)(f)~~ The the following statement in bold, capitalized ~~type;~~ font: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS". DAYS."; and
- ~~(f)(g)~~ the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52.

15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

- ~~(a) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0501.~~
- ~~(b) It is unlawful to harvest shellfish by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises.~~

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

SECTION .0200 – OYSTERS

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

- (a) It ~~is~~ shall be unlawful to take or possess oysters from public bottom except from October 15 through March 31.
- (b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of oysters:
 - (1) specify time;
 - (2) specify area;
 - (3) specify means and methods;
 - (4) specify season within the period set forth in Paragraph (a) of this Rule;
 - (5) specify size, but the minimum size limit specified shall not be less than three inches, except the minimum size limit specified shall not be less than two and one-half inches to prevent loss of oysters due to predators, pests, or infectious oyster diseases; and
 - (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard

U.S. bushels in a commercial fishing operation per day.

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

15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS

(a) It is ~~shall be~~ unlawful to possess oysters ~~which that~~ have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by proclamation issued under the authority of Rule .0201 of this Section, or any combination thereof that exceeds a five-percent tolerance limit by volume. Oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken. In determining whether the tolerance limit ~~is has been~~ exceeded, ~~the Fisheries Director or his agents may~~ Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being ~~graded and, graded, and~~ in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by ~~law. law~~ the entire quantity being graded or any portion thereof.

~~(b) All oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken.~~

~~(c)~~(b) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants permitted by the Division of Marine Fisheries.

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

15A NCAC 03K .0204 DREDGES / MECHANICAL MECHANICAL METHODS FOR OYSTERING PROHIBITED

It is ~~shall be~~ unlawful to use any ~~dredge or other mechanical method~~ mechanical methods for oystering as defined in 15A NCAC 03I .0101 to take oysters:

- (1) in the Mechanical Methods Prohibited areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises by ~~permit~~; a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; and
- (2) on any posted ~~bottoms~~ bottom upon which oysters or shells have been planted by the state, unless such ~~bottoms have~~ bottom has been opened to the public and ~~dredging permitted~~. mechanical methods for oystering are allowed.

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

15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM A PRIVATE SHELLFISH BOTTOMS LEASE OR FRANCHISE

(a) It is ~~shall be~~ unlawful to take, possess, buy, or sell oysters from a shellfish ~~leases~~ lease or ~~franchises~~ franchise during the

open season unless such oysters have been culled in accordance with Rule ~~15A NCAC 03K .0202~~ .0202 of this Section.

~~(b) It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division, that the oysters were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

~~(c) It is shall be~~ unlawful for a shellfish ~~lease or franchise holders holder or their~~ the holder's designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a ~~shellfish leases~~ lease or ~~franchises~~ franchise.

(d) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

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

15A NCAC 03K .0207 OYSTER SIZE AND HARVEST LIMIT EXEMPTION EXEMPTIONS

Possession and sale of oysters by a hatchery or ~~oyster~~ aquaculture operation and purchase and possession of oysters from a hatchery or ~~oyster~~ aquaculture operation shall be exempt from bag and size limit restrictions ~~set under authority of 15A NCAC 03K .0201 and 03K .0202~~ as set forth in Rules .0201 and .0202 of this Section. It is ~~shall be~~ unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture ~~Operations Permit~~. Operation Permit as set forth in 15A NCAC 03O .0503.

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

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

(a) For the purpose of this Rule and 15A NCAC 03R .0116, "Seed Oyster Management Area" shall mean a shellfish producing habitat area located in open harvest waters that has environmental conditions unsuitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to allow the transfer of oysters to shellfish leases or franchises that have more suitable environmental conditions for further grow-out.

(b) The Fisheries Director may, by proclamation, modify or close Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for the protection of public health related to the public health programs under the authority of the Marine Fisheries Commission.

~~(a)~~(c) It is ~~shall be~~ unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and

requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

~~(b)~~(d) It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

Authority G.S. 113-134; 113-182; 113-203; ~~113-221;~~ 143B-289.52.

15A NCAC 03K .0209 OYSTER SANCTUARIES

~~(a) It is unlawful to use a trawl net, long haul seine, or swipe net in Oyster Sanctuaries designated in 15A NCAC 03R .0117. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~

(a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.

(b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.

(c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.

~~(b)~~(d) It is shall be unlawful to use mechanical methods ~~for oystering or clamming~~ in, or to take oysters or clams from shellfish from, Oyster Sanctuaries designated in 15A NCAC 03R .0117, .0117 or in accordance with Paragraph (c) of this Rule.

(e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

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

SECTION .0300 - HARD CLAMS (MERCENARIA)

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

(a) It is shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It is shall be unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with ~~15A NCAC 3K .0305(b).~~ Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which it was taken. Agents of the Fisheries Director are In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of

portions of the entire quantity of ~~clams being graded~~ graded, and in cases of violations, may seize and return to public bottom or ~~other disposition~~ otherwise dispose of the clams as authorized by law ~~of~~ the entire quantity being graded or any portion thereof.

(b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in ~~15A NCAC 3K .0302~~ Rule .0302 of this Section may or may not apply; apply for:

- (1) ~~For harvest limits for temporary openings made upon the recommendation of Division of Environmental Health, consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan;~~
- (2) ~~For maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery Management Plan; or~~
- (3) ~~For relaying of polluted clams from polluted waters to private shellfish bottoms~~ bottom as permitted by ~~15A NCAC 3K .0104.~~ Rule .0104 of this Subchapter.

Authority G.S. 113-134; ~~113-136;~~ 113-137; 113-182; ~~113-221;~~ 143B-289.52.

15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM

(a) It is shall be unlawful to take, buy, sell, or possess any clams taken by ~~mechanical methods~~ mechanical methods for clamming as defined in 15A NCAC 03I .0101, "mechanical methods for clamming," .0101 from public bottom unless the season is open.

(b) The Fisheries Director may, by proclamation, open and close the season for the taking of clams by mechanical methods from public bottom at any time in the Atlantic Ocean and only from December 1 through March 31 in Internal ~~Coastal~~ Waters.

(c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that were opened at any time from January 1979 through September 1988 in:

- (1) Newport, North, White Oak, and New rivers;
- (2) Core and Bogue sounds;
- (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
- (4) the Atlantic Ocean.

Other areas opened for purposes as set out in ~~15A NCAC 03K Rule .0301(b) of this Section~~ shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(d) The Fisheries Director may, by proclamation, impose any of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:

- (1) specify time;
- (2) specify means and methods;
- (3) specify size; and
- (4) specify quantity.

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

15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS

(a) It is ~~shall be~~ unlawful to take clams by ~~any method, other than by hand tongs, hand rakes, or by hand,~~ mechanical methods for clamming as defined in 15A NCAC 03I .0101, except as provided in ~~15A NCAC 03K Rule .0302 and .0303, of this Section.~~ Regardless of the areas ~~which that~~ may be opened, it is ~~shall be~~ unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as ~~described defined~~ in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*-*alterniflora*) that may exist together or separately.

(b) It is ~~shall be~~ unlawful to possess clam trawls or cages aboard a vessel at any time, or have ~~kick/deflector~~ kick or deflector plates ~~normally otherwise~~ used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with ~~15A NCAC 03K .0302(a).~~ Rule .0302(a) of this Section. A period of 14 days before and after the season as specified by proclamation ~~will shall~~ be allowed for the installation and removal of ~~kick/deflector~~ kick or deflector plates and clam trawls or cages. Vessels with permits for activities provided for in ~~15A NCAC 03K Rules .0104, .0107, .0303(a), and .0401 of this Subchapter~~ shall be exempt from this Rule during the times such activities are permitted.

Authority G.S. 113-134; 113-182; ~~113-221~~; 143B-289.52.

15A NCAC 03K .0305 CLAM SIZE AND HARVEST LIMIT EXEMPTION EXEMPTIONS

Possession and sale of clams by a hatchery or ~~clam~~ aquaculture operation and purchase and possession of clams from a hatchery or ~~clam~~ aquaculture operation shall be exempt from bag and size limit restrictions in ~~15A NCAC 3K .0301(a).~~ as set forth in Rule .0301 of this Section. It is ~~shall be~~ unlawful to possess, sell, purchase, or transport such clams unless they are in compliance with all conditions of the Aquaculture Operation ~~Permit.~~ Permit as set forth in 15A NCAC 03O .0503.

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

SECTION .0400 - RANGIA CLAMS

15A NCAC 03K .0401 PROHIBITED (POLLUTED) POLLUTED AREA PERMIT REQUIREMENT REQUIREMENTS

It is ~~shall be~~ unlawful to take Rangia clams or their shells by any method from ~~prohibited (polluted) polluted~~ waters without first ~~securing~~ obtaining a Permit to Harvest Rangia Clams from ~~Prohibited (Polluted) Polluted~~ Areas from the Fisheries Director. The permit application shall include a list of all designees operating under the permit. ~~Such~~ The permit shall designate the area, means and methods, and ~~time(s) times~~ in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for disposing of Rangia clam meats. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

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

SECTION .0500 - SCALLOPS

15A NCAC 03K .0505 SEA SCALLOPS SIZE LIMIT AND TOLERANCE

It is ~~shall be~~ unlawful to land or possess sea scallops with a shell height (length) of less than three and one-half inches. A tolerance of not more than ~~ten~~ 10 percent by number for undersized sea scallop shell height shall be allowed. In determining whether the ~~proportion of undersized sea scallops exceeds the ten percent tolerance limit,~~ the Fisheries Director and his agents are limit has been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may ~~require seizure or other disposition~~ seize and return to public bottom or otherwise dispose of the sea scallops as authorized by law. law the entire quantity being graded or any portion thereof.

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

15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASES LEASE OR FRANCHISES FRANCHISE

(a) ~~It shall be unlawful to sell, purchase, or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division of Marine Fisheries, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(a) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(b) It shall be unlawful for a shellfish lease or franchise holders holder or their the holder's designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a shellfish leases lease or franchises franchise.

(c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

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

SUBCHAPTER 03L – SHRIMPS, SHRIMP, CRAB, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0101 SHRIMP HARVEST RESTRICTIONS

(a) It is ~~shall be~~ unlawful to take shrimp until the Fisheries Director, by proclamation, opens the season.

(b) The Fisheries Director may, by proclamation, impose any ~~or~~ ~~all~~ of the following restrictions on the taking of shrimp:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

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

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

It is shall be unlawful to take shrimp by any method from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:

- (1) in the Atlantic Ocean;
- (2) with the use of fixed ~~and~~ nets, channel nets, hand seines, shrimp pots, or cast nets; or
- (3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

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

15A NCAC 03L .0103 PROHIBITED NETS, MESH LENGTHS LENGTHS, AND AREAS

(a) It is shall be unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) ~~Trawl net~~ trawl nets: one and one-half inches;
- (2) ~~Fixed fixed~~ nets, channel nets, float nets, butterfly nets, and hand ~~seines~~ seines: one and one-fourth inches; and
- (3) ~~Cast net~~ cast nets: no restriction.

(b) It is shall be unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh length. Net material used as chafing gear shall be no less than four inches mesh length, except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It is shall be unlawful to take shrimp with trawls that have a combined headrope of greater than 90 feet in Internal ~~Coastal~~ Waters in the following areas:

- (1) ~~North north~~ of the 35° 46.3000' N latitude line;
- (2) Core Sound south of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line;
- (3) Pamlico River upstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- (4) Neuse River southwest of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) ~~Effective January 1, 2017 it is~~ It shall be unlawful to take shrimp with trawls that have a combined headrope of greater than 220 feet in Internal ~~Coastal~~ Waters in the following areas:

- (1) Pamlico Sound south of the 35° 46.3000' N latitude line and north of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks;
- (2) Pamlico River downstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- (3) Neuse River northeast of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(e) It is shall be unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

(f) It is shall be unlawful to use channel nets except as provided in 15A NCAC 03J .0106.

(g) It is shall be unlawful to use shrimp pots except as provided in 15A NCAC 03J .0301.

(h) It is shall be unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. These federal rules are incorporated by reference including subsequent amendments and editions. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> <https://www.ecfr.gov/cgi-bin/ECFR> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, ~~North Carolina~~ NC 28557 at no cost.

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

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It is shall be unlawful to:

- (1) ~~Possess possess~~ from areas open to the harvest of shrimp more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303(e) and (f).
- (2) ~~Take take~~ or possess more than four quarts, heads on or two and one-half quarts, heads off, of shrimp per person per day with a cast net from areas closed to the taking of shrimp.

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

SECTION .0200 – CRABS

15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS

(a) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(1) from January 1 through January 31, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(b) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(2) from March 1 through March 15, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.

(b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:

- (1) soft crabs;
(2) pink and red-line peeler crabs;
(3) white-line peeler crabs; and
(4) from March 1 through October 31, male crabs to be used as peeler crab bait.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(c) It shall be unlawful to possess more than five percent by number of the following hard blue crabs in any combination in any container:

- (1) male hard blue crabs less than five inches from tip of spike to tip of spike;
(2) immature female hard blue crabs;
(3) mature female hard blue crabs less than five inches from tip of spike to tip of spike; and
(4) mature female hard blue crabs with a dark (brown or black) sponge from April 1 through April 30 statewide. For the purpose of this Rule, a "mature female hard blue crab with a dark sponge" shall mean a mature female hard crab that has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.

(d) It shall be unlawful to possess blue crabs described in Subparagraphs (c)(1) through (c)(3) of this Rule unless individual crabs are sorted and placed into separate containers for each of the following categories:

- (1) soft crabs;
(2) pink and red-line peeler crabs;
(3) white line peeler crabs; and

(4) from March 1 through October 31, male crabs to be used as peeler crab bait.

All blue crabs not sorted into containers as specified shall be deemed hard blue crabs for the purpose of establishing the five percent tolerance described in Paragraph (c) of this Rule.

(e)(e) It is shall be unlawful to possess more than five percent by number of white-line peelers peeler crabs in a container of pink and red-line peeler crabs, peelers, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(e)(f) It is shall be unlawful to:

- (1) sell white-line peelers; peeler crabs;
(2) possess white-line peelers peeler crabs unless they are to be used in the harvester's permitted blue crab shedding operation; and or
(3) possess male white-line peelers peeler crabs from June 1 through September 1.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(e)(g) It is shall be unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day for recreational purposes, purposes, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(f)(h) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and take the following actions for may further restrict commercial and recreational blue crab harvest: harvest by imposing any of the following requirements on the taking of blue crabs:

- (1) specify areas;
(2) specify seasons;
(3) specify time periods;
(4) specify means and methods;
(5) specify culling tolerance; and
(6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

(i) It shall be unlawful to fail to immediately return hard blue crabs not meeting the requirements of this Rule to the waters from which they were taken.

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

15A NCAC 03L .0202 CRAB TRAWLING

(a) It is shall be unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It is shall be unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl is shall be three inches, except:

- (1) The the minimum mesh length is shall be four inches in the area of western Pamlico Sound west of a line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "1" at the southern end

of Roanoke Island; running southerly to a point 35° 30.7500' N - 75° 40.5667' W near the "S" Beacon at Long Shoal; running southwesterly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04 .6167' N - 76° 27.8000' W on Point of Marsh; and

(2) ~~The~~ the Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It ~~is~~ shall be unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

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

15A NCAC 03L .0203 CRAB DREDGING

~~(a)~~ It ~~is~~ shall be unlawful to take crabs with dredges ~~except~~ except

(1) ~~from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109; and~~

(2) ~~incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph (a)(1) of this Rule provided the weight of the crabs shall not exceed; exceed the lesser of:~~

~~(A)(1) 50 10 percent of the total weight of the combined oyster and crab catch; or~~

~~(B)(2) 500 pounds, whichever is less. 100 pounds.~~

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

~~(b) It is unlawful to take crabs with dredges between sunset and sunrise and between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.~~

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

15A NCAC 03L .0204 CRAB POTS

(a) It ~~is~~ shall be unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

- (1) specify areas;
- (2) specify time periods; and

- (3) specify means and methods.

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

15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES

(a) It ~~is~~ shall be unlawful to set or use trawls, pots, ~~and~~ or mechanical methods for ~~oysters or clams shellfish~~ or take crabs with the use of commercial fishing equipment ~~from the crab spawning sanctuaries described in 15A NCAC 03R .0110 from March 1 through August 31; in crab spawning sanctuaries:~~

(1) from March 1 through August 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(1); and

(2) from March 1 through October 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(2).

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

- (1) specify areas;
- (2) specify time periods;
- (3) specify means and methods; and
- (4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

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

SUBCHAPTER 03M - FINFISH

SECTION .0200 - STRIPED BASS

15A NCAC 03M .0201 STRIPED BASS REQUIREMENTS; GENERAL

(a) ~~Striped bass is defined as striped bass~~ For the purpose of this Section, "striped bass" shall mean striped bass (Morone saxatilis) and its hybrids taken in coastal and joint fishing waters. Coastal and Joint Fishing Waters.

(b) It ~~is~~ shall be unlawful to possess striped bass ~~imported from other states that are less than 18 inches long (total length); length) imported from other states.~~

(c) It ~~is~~ shall be unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except during any:

(1) open striped bass season established for ~~internal coastal waters; Internal Waters;~~

(2) open striped bass season established for the Atlantic Ocean; or

(3) open striped bass season of another state without possession of the following:

(A) ~~A~~ a bill of lading as described in 15A NCAC 03I .0114; and

(B) ~~A~~ a numbered, state-issued tag from the ~~State~~ state of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.

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

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

15A NCAC 03M .0202 STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) It ~~is shall be~~ unlawful to possess striped bass from the ~~coastal fishing waters~~ Coastal Fishing Waters of the Cape Fear River and its tributaries.

(b) It ~~is shall be~~ unlawful to possess striped bass from the Roanoke River Management ~~Area Area~~, as designated in 15A NCAC 03R .0201, in a commercial fishing operation.

(c) The Fisheries Director may, by ~~proclamation~~ proclamation, impose any ~~or all~~ of the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in ~~internal coastal waters~~ Internal Waters during the period from October 1 through April 30:

- (1) ~~Specify~~ specify fishing days and times;
- (2) ~~Specify areas; specify area;~~
- (3) ~~specify means and methods;~~
- (4) ~~specify size, but the minimum size specified shall not be less than 18 inches total length; and~~
- (~~3~~)(5) ~~Specify~~ specify quantity, except possession for recreational purposes shall not exceed:
 - (A) more than three fish in any one day in the Albemarle Sound Management ~~Area Area~~, as designated in ~~Rule~~ 15A NCAC 03R .0201; and
 - (B) more than two fish in any one day in the ~~joint and coastal fishing waters~~ Joint and Coastal Fishing Waters of the Central Southern Management ~~Area Area~~, as designated in ~~Rule~~ 15A NCAC 03R ~~.0201; .0201~~.
- (4) ~~Specify means and methods; and~~
- (5) ~~Specify size, but the minimum size specified shall not be less than 18 inches total length.~~

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

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

15A NCAC 03M .0204 STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: ATLANTIC OCEAN

It ~~is shall be~~ unlawful to possess striped bass taken from the Atlantic Ocean ~~less other~~ than the size limit as ~~determined~~ established by the Atlantic States Marine Fisheries Commission ~~in their~~ Interstate Fisheries Fishery Management Plan for ~~striped bass~~ Atlantic Striped Bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate ~~Fisheries~~ Fishery Management Plan.

Authority G.S. 113-134; 113-182; ~~113-221;~~ 113-221.1; 143B-289.52.

15A NCAC 03M .0205 STRIPED BASS; PROHIBITED TRAWLING

(a) It ~~is shall be~~ unlawful to possess striped bass on a vessel with a trawl net on that vessel in ~~internal coastal waters~~ Internal Waters except during transit from ocean fishing grounds to port during any open striped bass trawl season in the Atlantic Ocean established by proclamation. Striped bass so possessed ~~must~~ shall meet the minimum size limit set by proclamation.

(b) It ~~is shall be~~ unlawful to possess striped bass on a vessel in the Atlantic Ocean with a trawl net on that vessel except during any open striped bass trawl season in the Atlantic Ocean established by proclamation.

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0503 FLOUNDER

(a) It ~~is shall be~~ unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.

(b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° 33.000'N) to Cape Lookout (34° 36.000'N) unless each trawl has a mesh length of ~~5-1/2~~ five and one-half inches or larger diamond mesh (stretched) or ~~6~~ six inches or larger square mesh (stretched) applied throughout the body, ~~extension(s)~~ extensions, and the cod end (tailbag) of the net except as provided in Paragraphs (g) and (h) of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

- (1) ~~It is it shall be~~ unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the ~~vessel~~ vessel, or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (2) ~~It is it shall be~~ unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (3) ~~It is it shall be~~ unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
- (4) ~~It is it shall be~~ unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean.

Ocean, except as specified in Subparagraph ~~(e)(1) of this Rule.~~ (1) of this Paragraph.

(d) All fish dealer transactions in flounder landed from the Atlantic Ocean ~~must~~ shall be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related ~~rules~~ requirements in 15A NCAC 03O .0500.

(e) It ~~is~~ shall be unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.0000'N).

(g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

(h) Flynets are exempt from the flounder trawl mesh requirements if they meet the following ~~definition:~~ requirements:

- (1) ~~The the~~ net has large mesh in the wings that measure ~~8~~ eight inches to 64 inches;
- (2) ~~The the~~ first body section (belly) of the net has 35 or more meshes that are at least ~~8~~ eight inches; and
- (3) ~~The the~~ mesh decreases in size throughout the body of the net to as small as ~~2~~ two inches or smaller towards the terminus of the net.

(i) Commercial ~~Season:~~ Season:

- (1) ~~The the~~ North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 80 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (2) ~~The the~~ season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

(3) ~~During~~ during any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(j) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

(k) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any ~~or all~~ of the following actions in the flounder fishery:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- ~~(4)(5)~~ Specify specify size;
- ~~(2)~~ Specify season;
- ~~(3)~~ Specify area;
- ~~(4)(6)~~ Specify specify quantity; and
- ~~(5)~~ Specify means/methods; and
- ~~(6)(7)~~ Require require submission of statistical and biological data.

(l) Possession and sale of flounder by a hatchery or flounder aquaculture operation and purchase and possession of flounder from a hatchery or flounder aquaculture operation shall be exempt from season and size limit restrictions set under Paragraph (k) of this Rule. It ~~is~~ shall be unlawful to possess, sell, purchase, or transport such flounder unless they are in compliance with all conditions of the Aquaculture ~~Operations~~ Operation Permit.

Authority G.S. 113-134; 113-169.5; 113-182; 143-221; 113-221.1; 143B-289.52.

SUBCHAPTER 03N - FISH HABITAT AREAS

15A NCAC 03N .0104 PROHIBITED GEAR, PRIMARY NURSERY AREAS

It ~~is~~ shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, ~~or mechanical method for clams or oysters~~ mechanical methods for clamming, or mechanical methods for oystering for the purpose of taking any marine fishes in any of the primary nursery areas described in 15A NCAC ~~3R~~ 03R .0103.

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

15A NCAC 03N .0105 PROHIBITED GEAR, SECONDARY NURSERY AREAS

(a) It ~~is~~ shall be unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 03R .0104.

(b) It ~~is~~ shall be unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 03R .0105, except that the Fisheries Director, may, by proclamation, open any ~~or all~~ of the special secondary nursery areas, or any portion thereof, ~~listed~~ designated in 15A NCAC 03R .0105 to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 03L .0100 and .0200.

Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52.

SUBCHAPTER 030 - LICENSES, LEASES, FRANCHISES
FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

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

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

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

~~(a)~~(c) To obtain any Division of Marine Fisheries licenses, endorsements, commercial fishing vessel registrations, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application: except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party, or person holding a power of attorney:

- (1) Full full name, physical address, mailing address, date of birth, and signature of the licensee on the application. licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized; notarized.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- ~~(2)~~(3) Current current and valid picture identification of licensee or responsible party. the licensee. Acceptable forms of picture identification are state driver's license, state identification card, card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof; thereof.
- ~~(3)~~(4) Certification certification that the applicant does not have four or more marine or estuarine resource violations convictions during the previous three years; years.

- ~~(4)~~ Valid documentation papers or current motor boat registration, or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master of that vessel shall also be specified. The responsible party licensee shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel; changing the vessel master.
- ~~(6)~~ a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.
- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- ~~(6)~~(8) An affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessel(s) vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a commercial fishing vessel registration Commercial Fishing Vessel Registration with a for-hire endorsement.
- (7) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration in a partnership name;
- (8) For nonresidents, certification of the state of residency;
- (9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (11) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated

~~license, the applicant shall provide valid certification as a North Carolina certified shellfish dealer;~~

(13) ~~In addition, for the Blanket For Hire Captain's Coastal Recreational Fishing License (CRFL), the applicant shall provide a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and~~

(14) ~~In addition, for the Blanket For Hire Vessel CRFL or the Non-Blanket For Hire Vessel License, valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

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

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

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

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

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

(2) All other types of licenses:

(A) North Carolina voter registration card;

(B) current North Carolina Driver's License;

(C) current North Carolina Certificate of Domicile;

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

(E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty

assignment at a military facility in North Carolina.

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

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

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

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

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

(3) Fish Dealer License:

(A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and

(B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.

(4) Land or Sell License:

(A) valid documentation papers or current motor boat registration, or copy thereof; or

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

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

(5) Ocean Fishing Pier License:

(A) the information required in G.S. 113-169.4; and

(B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.

(6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.

(7) Spotter Plane License:

(A) the information required in G.S. 113-171.1;

(B) the current aircraft registration; and

(C) a list of operators.

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

- (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
- ~~(+)(2)~~ To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
- ~~(2)(3)~~ ~~It is lawful~~ it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean equal to ~~than~~ the number of vessels that ~~he owns~~ the person owns that individually met the eligibility requirements of Parts ~~(b)(1)(A)(f)(2)(A)~~ and ~~(b)(1)(B)(f)(2)(B)~~ of this Rule.
- ~~(3)(4)~~ ~~The~~ the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
- ~~(4)(5)~~ ~~At~~ at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel master ~~of the vessel~~ for each License to Land Flounder from the Atlantic Ocean issued.
- ~~(5)(6)~~ ~~The~~ the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.
- ~~(6)(7)~~ Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and ~~expire on June 30.~~ year.

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

- (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.
- (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

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

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

~~(e) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:~~

- ~~(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.~~
- ~~(2) Current picture identification of tournament organizer. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.~~

~~(d) To obtain a Land or Sell License, the following information is required for a proper application:~~

- ~~(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;~~
- ~~(2) Current picture identification of responsible party or master. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;~~
- ~~(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered, in accordance with G.S. 113-169.5.

(e) Proof of residency in North Carolina for:

- ~~(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the~~

applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and

- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;
 - (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
 - (C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
- (A) North Carolina voter registration card; or
 - (B) Current North Carolina Driver's License; or
 - (C) Current North Carolina Certificate of Domicile; or
 - (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 - (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

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

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

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party, or person holding a power of attorney:

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated,

written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.

- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, or commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0102 RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH PROCEDURES AND REQUIREMENTS TO RENEW LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

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

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

(c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.

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

(b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
- (4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.
- (5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.
- (6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.
- (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

Authority G.S. 113-134; 113-168; ~~113-168.4~~; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0103 AUXILIARY VESSELS

(a) Buy boats, run boats, purse boats or any other vessels used in conjunction with commercial fishing operations, except vessels without motors used in connection with other vessels with commercial fishing vessel registrations, shall have a commercial fishing vessel registration. It shall be unlawful to fail to comply with Commercial Fishing Vessel Registration requirements set forth in G.S. 113-168.6 to operate a buy vessel, run vessel, purse

vessel, or any other vessel used in conjunction with a commercial fishing operation, except as specified.

(b) ~~A person~~ An individual in command of a vessel that is auxiliary to a vessel with a ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration with a ~~person~~ an individual aboard who holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License engaged in a commercial fishing operation using a pound net, ~~long haul, long haul, or beach seine or purse seine~~ is exempt from the provisions of G.S. 113-168.2 (a1).

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-168.6; ~~113-169~~; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0104 COMMERCIAL UNLOADING OF FISH

It is shall be unlawful to unload fish from a vessel in North Carolina ~~which~~ that has been engaged in a commercial fishing operation outside ~~state~~ State waters without possessing a valid:

- (1) Standard or Retired Standard Commercial Fishing Licenses; ~~or~~ License with applicable endorsement;
- (2) ~~Menhaden License for Nonresidents Without a Standard Commercial Fishing License; or~~
- (3)(2) Shellfish License for North Carolina Residents without a Standard Commercial Fishing Licenses; License; or
- (4)(3) Land or Sell License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.4; ~~113-169~~; 113-169.5; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0105 REQUIREMENTS FOR BAIT AND MUSSEL DEALERS

(a) ~~Persons dealing in minnows, live shrimp, or both minnows and live shrimp for bait purposes, who are subject to licensing requirements under G.S. 113-169.3 are required to purchase only the license applicable to finfish dealers. A bona fide dealer in shrimp, licensed under the provisions of G.S. 113-169.3, may, however, deal in minnows as well as live shrimp for bait purposes, as an incident of his operations under his shrimp dealer's license.~~

(b) ~~Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 are shall be required to purchase only the license applicable to clam dealers and meet the shellfish dealer certification requirements in 15A NCAC 030 .0101(a)(11).~~ shall be required to hold a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, as described in Rule .0101 of this Section.

Authority G.S. 113-134; 113-169.3; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0107 LOST LICENSE REPLACEMENT AND FEES

(a) Lost licenses except Blanket Coastal Recreational Fishing Licenses, endorsements, and commercial fishing vessel registration decals may be replaced upon payment of a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or commercial fishing vessel registration,

~~whichever is less. A licensee shall receive a replacement for a commercial license, endorsement, Commercial Fishing Vessel Registration decal, or Recreational Commercial Gear License upon payment to the Division of Marine Fisheries a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or Commercial Fishing Vessel Registration, whichever is less.~~

~~(b) The replacement fee for the Blanket Coastal Recreational Fishing Licenses is five dollars (\$5.00). A licensee shall receive a replacement Coastal Recreational Fishing License or a for-hire license as defined in G.S. 113-174.3 upon payment to the Division of Marine Fisheries a fee of five dollars (\$5.00).~~

Authority G.S. 113-134; 113-168.1; 113-168.6; 113-169.4; 113-173; 113-174.1; 113-174.2; 113-174.3; 113-182; 143B-289.52.

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

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

~~(a)(b) The Division of Marine Fisheries shall provide assignment forms to the licensee upon issuance of the Standard Commercial Fishing License. request. Assignment must be made on the Only Division assignment forms. forms shall be used to obtain an assignment. On the assignment form, the Standard Commercial Fishing License holder must licensee shall designate what, if any, endorsements are included in the assignment. Endorsements may shall not be assigned independent of the Standard Commercial Fishing License. It is shall be unlawful for the Standard Commercial Fishing License holder licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Division Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:~~

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

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

~~(b)(d) Assignments terminate when: shall terminate:~~

- ~~(1) when the date specified on the assignment form is reached; or~~

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

~~If the properly completely assignment form is not received by the Division within five days from the date it was signed, the assignment is null and void. For an extension of time for assignments, a new assignment form must be completed in accordance with Subparagraphs (a)(1) (3) of this Rule.~~

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

~~(d)(f) All landings occurring during the time of the assignment shall be credited to the Standard Commercial Fishing License holder; licensee, not the assignee.~~

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

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

~~(g) Assignments submitted without complete and required information shall be deemed not in effect and shall not be considered further until resubmitted with all required information.~~

~~(h)(i) It is shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the assignor of that license licensee within five days of notice that the assignment has been terminated or a demand by the assignor licensee to return the license.~~

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

15A NCAC 030 .0110 LICENSE REFUNDS

All license fees are non-refundable except ~~when~~ if licenses are issued by the Division of Marine Fisheries in error.

Authority G.S. 113-134; 113-168.1; 113-173; 113-182; 143B-289.52; 147-84; 1993 (Regular Session 1994), c. 576, s. 3.

15A NCAC 030 .0111 SURRENDER OF LICENSES

(a) It ~~is~~ shall be unlawful for any licensee to refuse to surrender to an agent of the Secretary all licenses, license receipts, endorsements, commercial fishing vessel registration or decals, and other forms and records relating to the license following service of notice of suspension or revocation of licenses in accordance with G.S. ~~443-474~~, 113-171 and Rule .0114 of this Section.

(b) It ~~is~~ shall be unlawful for any person in custody or possession of any licenses, license receipt, endorsements, commercial fishing vessel registration or decals, and other documentation required to be surrendered to refuse to surrender same to an agent of the Secretary making such demand.

(c) A license issued by the Division in error shall be required to be surrendered immediately upon service of a notice by an agent of the Fisheries Director to surrender the license.

Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145.

15A NCAC 030 .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS

It ~~is~~ shall be unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license ~~application~~, issuance.

Authority G.S. 113-134; 113-169.4; 113-174.1; 113-182; 143B-289.52.

15A NCAC 030 .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 shall be subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, 14-33, 14-72, or 14-399 shall be deemed a conviction for the purposes of license suspension or revocation.

(c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, second, third, fourth, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction for the purposes of license suspension or revocation. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;

(2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;

(3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director shall revoke all licenses issued to the licensee; and

(4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director. Upon service of a notice of suspension or revocation of a license, it shall be unlawful to fail to surrender any license so suspended or revoked.

(e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in Subparagraph (c)(4) of this Rule. For a request for reinstatement following revocation, the former licensee shall demonstrate in the request that the licensee will conduct the operations for which the license is sought in ~~accord~~ accordance with all applicable laws and rules, shall submit the request in writing, and shall ~~send mail~~ send mail the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of the law.

~~(g) A licensee shall not willfully~~ It shall be unlawful to evade the service prescribed in this Rule.

Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145.

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 030 .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) ~~Upon~~ After acceptance of a completed ~~application, shellfish lease application~~ as set forth in Rule .0202 of this Section, the proposed ~~shellfish~~ lease area shall be inspected by agents of the ~~Division. Division of Marine Fisheries.~~ Proposed ~~shellfish~~ lease areas inconsistent with applicable standards contained or referenced in ~~15A NCAC 30 .0204 Rule .0201~~ of this Section shall result in the return of ~~applications the application~~ for amendment to remove the inconsistencies. If the boundaries of the proposed ~~shellfish~~ lease area are modified, the stakes identifying such areas shall be relocated accordingly by the ~~applicant, applicant or applicants.~~ The failure of ~~the applicant or applicants~~ to amend ~~applications the application~~ or modify ~~the shellfish~~ lease area identification, when required, ~~within 30 days of notification~~ shall result in denial of ~~such applications. the application.~~

(b) If the initial or amended ~~shellfish~~ lease application is deemed consistent with all applicable requirements, the Secretary or ~~his~~ the Secretary's designee shall notify the applicant and publish notices of intention to lease in accordance with the standards in G.S. 113-202(f).

(c) The Secretary shall consider the ~~shellfish~~ lease application, the Division's proposed lease area analysis, and public comments, and may in ~~his~~ the Secretary's discretion lease or decline to lease the proposed lease area or any part thereof. Special conditions may be imposed so that ~~shellfish~~ leases may be issued ~~which that~~ would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the ~~shellfish~~ lease by the Secretary, the application shall be considered denied.

(d) ~~Upon~~ After approval of ~~leases a shellfish lease~~ by the Secretary, ~~the applicant or applicants~~ shall mark the ~~shellfish bottom leases~~ lease in accordance with Rule .0204 of this Section ~~within 30 days of approval. 15A NCAC 30 .0204(a)(1), water column leases in accordance with 15A NCAC 30 .0204(a)(2), and shall within 90 days submit to the Division acceptable surveys of the areas approved for leasing except that a water column lease which entirely covers a shellfish bottom lease or franchise with an accepted survey on file does not require another survey. Such surveys shall be made at the expense of applicants and must meet the following standards:~~

- (1) ~~Surveys and maps shall meet all the requirements of 21 NCAC 56 .1600, Standards of Practice for Land Surveying in North Carolina, which is hereby incorporated by reference including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Marine Fisheries Division, Marine Fisheries Building, 3441 Arendell St., P.O. Box 769, Morehead City, North Carolina 28557, at no cost.~~
- (2) ~~Maps shall bear the certificate:~~

"I _____ certify that this map was (drawn by me)(drawn under my supervision) from (an actual survey made

~~by me)(an actual survey made under my supervision); that the error of closure as calculated by latitudes and departures is 1: _____, that the area is _____ acres. Witness my hand and seal this _____ day of _____ AD _____."~~

Surveyor or Engineer

- (3) ~~The phrase "other appropriate natural monuments or landmarks" in 21 NCAC 56 .1604(e)(9) shall include bridges, roads, highways, intersections, publicly maintained aids to navigation, houses and other permanent buildings, radio, telephone, TV, and water towers; docks; piers, and bulkheads; but does not include stakes marking the boundaries of adjoining leases, points of marsh, junctions of streams, or other landmarks which are particularly subject to change through natural processes, storms, or the effect of man.~~
- (4) ~~A written description of the survey suitable for official documents shall be provided with the survey.~~
- (5) ~~Locations of all corner markers in latitude and longitude shall be provided with the survey and presented in an eight digit format. The relative accuracy of the corner marker locations shall be equal to or less than two meters. Information on the method of measurement, make and model of equipment, and coordinate system used to determine the latitude and longitude shall be included.~~

(e) Proposed shellfish bottom lease areas remain public bottom until a lease contract has been executed by the Secretary.

(f) Proposed ~~shellfish~~ water column lease areas superjacent to ~~shellfish~~ bottom leases and ~~recognized perpetual~~ franchises remain public water until a lease contract has been executed by the Secretary.

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

15A NCAC 030 .0205 SHELLFISH LEASE RENEWAL

(a) ~~Lease~~ Shellfish lease renewal applications shall be provided to ~~lessees~~ lease holders by the Division of Marine Fisheries as follows:

- (1) ~~For for a shellfish bottom leases, lease, a renewal applications~~ application shall be provided in January of the year of expiration.
- (2) ~~For for a shellfish water column leases, lease, a renewal applications~~ application shall be provided at least 90 days prior to the expiration ~~dates. date.~~

(b) ~~Lease~~ A shellfish lease renewal ~~applications~~ application shall be accompanied by management plans meeting a Shellfish Lease Management Plan that meets the requirements of 15A NCAC 030 .0202(b). Rule .0202 of this Section. The non-refundable filing fee set forth in G.S. 113-202(j) shall accompany each renewal application for a shellfish bottom ~~leases. lease.~~

(e) ~~A survey for renewal leases shall be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.~~

(c) To be eligible to renew a shellfish lease, persons holding any acres under a shellfish lease or franchise shall meet the requirements established in Rules .0201 and .0204 of this Section and 15A NCAC 030 .0503(a).

(d) ~~When~~ If it is determined, after due notice to the lessee, shellfish lease holder and after opportunity for the lessee lease holder to be heard, that the lessee lease holder has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any ~~shellfish bottom or water column~~ lease. The lessee shellfish lease holder may appeal the Secretary's decision by ~~initiating~~ filing a petition for a contested case as outlined in 15A NCAC 03P-.0102. under G.S. 150B-23.

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to ~~recommend approval of~~ approve renewal of a shellfish lease in an area ~~closed to shellfishing by reason of pollution.~~ designated as polluted by a proclamation issued by the Fisheries Director. Excluded from this requirement are shellfish leases located in conditionally approved waters that have been temporarily closed when the conditions of the written management plan are not met as described in 15A NCAC 18A .0905. Shellfish leases partially closed due to pollution ~~must~~ shall be amended to exclude the area closed to ~~shellfishing~~ shellfish harvest prior to renewal. ~~For purposes of lease renewal determinations, an area shall be considered closed to shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal except shellfish leases in areas which have been closed for more than 50 percent of the days during the final four years prior to renewal and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.~~

(f) If the Secretary declines to renew a shellfish lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee, lease holder, may issue a renewal lease for all or part of the area previously leased to the lessee lease holder that contains conditions necessary to conform the renewal lease to the requirements of this Section for new leases.

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

15A NCAC 030 .0206 LEASE PROTEST SHELLFISH LEASE APPLICATION; REQUEST FOR REVIEW

~~(a) Should any person object to the granting of any initial or renewal lease, he has the right to protest its issuance prior to the granting of the lease by the Secretary. The protestant may file a sworn statement of protest with the Division stating the grounds for protest. The Secretary shall notify both the prospective lessee and the protestant upon receipt of a protest, and shall conduct such investigation as he deems necessary, and shall notify both parties of the outcome of his investigation. Protestants or applicants receiving an adverse recommendation on the lease application~~

~~from the Secretary may appeal this decision as outlined in G.S. 113-202(g).~~

(b)(a) Any member of the public shall be allowed an opportunity to comment on any shellfish lease application during the public comment period and subsequent public hearing at which the lease application is being considered by the Secretary. Secretary as set forth in G.S. 113-202.

(b) Procedures for how an applicant or a person other than the applicant who is aggrieved may proceed with a contested case based on dissatisfaction of the Secretary's decision on a shellfish lease application are provided in G.S. 113-202(g). Additionally, a person other than the applicant who is aggrieved may submit a request for a determination of the appropriateness of a contested case hearing. The request and any supporting documentation for the basis of the aggrieved person seeking to commence a contested case shall be submitted within 30 days after the disputed decision is made to the Shellfish Cultivation Lease Review Committee and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. The request shall be submitted on a form provided by the Division.

(c) The Shellfish Lease Review Committee shall notify the aggrieved person of the date of the public meeting for the Committee to consider the request no later than seven calendar days before the date of the public meeting.

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

15A NCAC 030 .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

~~(a) The owners of shellfish leases and franchises The holder or holders of a shellfish lease or franchise shall provide an annual production reports report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted planted, purchased, and harvested in connection with management for commercial production. Reporting forms will be provided to owners of shellfish bottom leases and recognized franchises during the period that annual notices of rent due are provided to owners of shellfish bottom leases in accordance with G.S. 113-202(j). Reporting forms will be provided to owners of water column leases prior to each annual anniversary date. in accordance with Rules .0201 and .0202 of this Section. The report shall include supporting documentation with evidence of purchased seed in accordance with Rule .0201 of this Section.~~

(b) The Division shall provide reporting forms annually to each shellfish lease or franchise holder to be used for the annual production report.

(b)(c) Failure to furnish by the holder or holders of the shellfish lease or franchise to submit the required annual production report, correct and in detail requested, report with all required fields completed, or filing a report containing false information, can constitute information constitutes grounds for termination. termination as set forth in Rule .0208 of this Section.

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

15A NCAC 030 .0208 ~~TERMINATION OF PROCEDURES FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES~~

(a) ~~Procedures for termination of shellfish leaseholds leases and franchises are provided in G.S. 113-202. An appeal of the Secretary's decision to terminate a leasehold is governed by G.S. 150B-23.~~

~~(b) Substantial breach of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes the following, except as provided in Paragraph (c) of this Rule:~~

- ~~(1) failure to meet shellfish production and marketing requirements for bottom leases or franchises in accordance with Rule .0201 of this Section;~~
- ~~(2) failure to maintain a planting effort of cultch or seed shellfish for bottom leases or franchises in accordance with Rule .0201 of this Section;~~
- ~~(3) failure either to meet shellfish production and marketing requirements or to maintain a planting effort of cultch or seed shellfish for water column leases in accordance with Rule .0201 of this Section;~~
- ~~(4) the Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; and~~
- ~~(5) the Attorney General initiates action for the purpose of vacating or annulling letters patent granted by the State, in accordance with G.S. 146-63.~~

~~(c)(b) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a leaseholder shellfish lease or franchise holder that failed to meet the requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, Rule .0201 or the rules of this Section or this Rule that govern a determination of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director ~~his or her~~ or the Fisheries Director's designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the leaseholder lease or franchise holder to fail to meet lease requirements:~~

- ~~(1) death, illness, or incapacity of the leaseholder shellfish lease or franchise holder or his the holder's immediate family as defined in G.S. 113-168 that prevented or will prevent the leaseholder lease or franchise holder from working the lease;~~
- ~~(2) damage to the shellfish lease or franchise from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;~~
- ~~(3) shellfish mortality caused by disease, natural predators, or parasites; or~~

- (4) damage to the shellfish lease or franchise from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

~~(d)(c) In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease or franchise number. In the case of hardship as described in Subparagraph (c)(4)(b)(1) of this Rule, the notice shall also state the name of the leaseholder shellfish lease or franchise holder or immediate family member and either the date of death or the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also include documentation of damage to the shellfish lease or franchise. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell St., Street, P.O. Box 769, Morehead City, NC 28557.~~

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52.

15A NCAC 030 .0209 ~~TRANSFER OF INTEREST ASSIGNMENT OF SHELLFISH LEASES AND FRANCHISES~~

(a) For the purpose of effecting assignments of shellfish leases or franchises in accordance with this Rule:

- (1) "transfer" shall be defined as any permanent assignment of a shellfish lease or franchise, in whole or in part.
- (2) "sublease" shall be defined as any temporary assignment of a shellfish lease or franchise, in whole or in part.

~~(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 030 .0202(b).~~

~~(b) No transfer or sublease of a shellfish lease or franchise, in whole or in part, shall be valid until notice is provided to the Division of Marine Fisheries as provided in Article 16 of Chapter 113 of the North Carolina General Statutes and the Division provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of the North Carolina General Statutes and Marine Fisheries Commission Rules. A transfer may only be made by the use of a form provided and approved by the Division.~~

~~(c) Notice to transfer or sublease a shellfish lease or franchise shall include the shellfish lease or franchise number, county in which the lease or franchise is located, and the name of the transferee or sub-lessee. The transferee or sub-lessee of a shellfish lease shall provide to the Division the required Shellfish Lease Management Plan and proof of completion of training requirements in accordance with Rule .0202 of this Section.~~

~~(b)(d) If the new owner obtains a The smallest portion of an existing shellfish bottom lease or franchise, it shall not contain less than franchise to be transferred or subleased shall be one-half acre acre. and the required notification to the Division shall be~~

~~accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).~~

~~(e) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).~~

~~(e) A shellfish lease or franchise shall not be transferred or subleased to a nonresident of North Carolina in accordance with G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, and G.S. 113-206.~~

~~(d)(f) Water column leases are not transferrable except when the Secretary approves such transfer. A shellfish water column lease shall only be transferred in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).~~

~~(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.~~

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52.

15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR SHELLFISH FRANCHISES

~~(a) The resolution of claims filed under G.S. 113-205 is governed by standards in Departmental Rules 15A NCAC 1G .0200 and .0300. Following receipt of notification that a claim has a valid chain of title, the owner shall provide to the Division within 90 days a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.~~

~~(b)(a) Acceptable management plans, Shellfish Management Plans, prepared in accordance with the standards in 15A NCAC 03O .0202(b), Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.~~

~~(e)(b) The survey and management plan Shellfish Management Plan requirements in Paragraphs (a) and (b) Paragraph (a) of this Rule, Rule and all other requirements and conditions of this Section affecting management of franchises, franchises shall apply to all valid shellfish franchises recognized prior to September 1, 1989. franchises.~~

~~(d)(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in 15A NCAC 03O .0201(e) accordance with Rules .0201 and .0207 of this Section averaged over the most recent three-year period after January 1 following the second anniversary of the dates of recognition of claims as valid shellfish franchises and continuing throughout the term of management plans Shellfish Management Plans required in Paragraph (b)(a) of this Rule. Annual reporting of commercial production shall be submitted upon receipt of forms provided by the Division for that purpose.~~

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-205; 113-206; 143B-289.52.

15A NCAC 03O .0211 PROTECTION OF PRIVATE SHELLFISH INTEREST FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

~~(a) It is shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for elams or oysters~~

~~shellfish on any shellfish lease or franchise except; unless it has been duly authorized by the Fisheries Director as provided in 15A NCAC 3K .0206 and .0303.~~

~~(1) for a holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; or~~

~~(2) for the purpose of placing and retrieving cages, bags, or other aquaculture gear within any shellfish lease or franchise.~~

~~(b) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued by the Division of Marine Fisheries in compliance with 15A NCAC 03O .0500.~~

Authority G.S. 113-134; 113-182; 113-201; 113-206; 143B-289.52.

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

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

(a) It is ~~shall be~~ unlawful for any individual to hold more than one Recreational Commercial Gear License.

(b) Recreational Commercial Gear Licenses shall only be issued to individuals.

Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 113-221; 143B-289.52.

15A NCAC 03O .0302 AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

(1) ~~One one~~ seine 30 feet or over in length but not greater than 100 feet with a mesh length less than ~~2-1/2 two and one-half~~ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;

(2) ~~One one~~ shrimp trawl with a headrope not exceeding 26 feet in length per ~~vessel. vessel;~~

(3) ~~With with~~ or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;

(4) ~~One one~~ multiple hook or multiple bait trotline up to 100 feet in length;

(5) ~~Gill Nets; gill nets;~~
 (A) ~~Not not~~ more than 100 yards of gill nets with a mesh length equal to or greater than ~~2-1/2 two and one-half~~ inches except as provided in Part (C) of this Subparagraph. Attendance is ~~shall be~~ required at all times;

(B) ~~Not not~~ more than 100 yards of gill nets with a mesh length equal to or greater than ~~5-1/2 five and one-half~~

inches except as provided in Part (C) of this Subparagraph. Attendance ~~is shall be~~ required when used from one hour after sunrise through one hour before sunset in ~~internal-coastal fishing waters~~ Internal Waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance ~~is shall be~~ required at all times in ~~internal-coastal fishing waters~~ Internal Waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W; ~~and~~

- (C) ~~Not not~~ more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on ~~board,~~ board a vessel, a maximum of 200 yards may be used from a vessel; and
- (D) ~~It is it shall be~~ unlawful to possess ~~aboard on board~~ a vessel more than 100 yards of gill nets with a mesh length less than ~~5-1/2 five and one-half~~ inches and more than 100 yards of gill nets with a mesh length equal to or greater than ~~5-1/2 five and one-half~~ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on ~~board,~~ board a vessel. It ~~is shall be~~ unlawful to possess ~~aboard on board~~ a vessel more than 200 yards of gill nets with a mesh length less than ~~5-1/2 five and one-half~~ inches and more than 200 yards of gill nets with a mesh length equal to or greater than ~~5-1/2 five and one-half~~ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on ~~board,~~ board a vessel;

- (6) A one hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;
- (7) ~~Skimmer~~ skimmer trawls not exceeding 26 feet in total combined ~~width,~~ width; and
- (8) ~~One one~~ pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of ~~1-1/2 one and one-half~~ inches, and enclosures constructed of net mesh of ~~1-1/4 one and one-fourth~~ inches or greater and with all dimensions being 36 inches or less. Attendance ~~is shall be~~ required at all times and all gear ~~must shall~~ be removed from

the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.

- (b) It ~~is shall be~~ unlawful to use more than the quantity of authorized gear specified in ~~Subparagraphs (a)(1) through (a)(8) of Paragraph (a) of this Rule,~~ regardless of the number of individuals ~~aboard on board~~ a vessel possessing a valid Recreational Commercial Gear License.
- (c) It ~~is shall be~~ unlawful for ~~a person an individual~~ to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.
- (d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

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

15A NCAC 03O .0303 POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSE POSSESSION LIMITS LICENSES

- (a) It ~~is shall be~~ unlawful to possess more than a single recreational possession limit when only one ~~person aboard individual on board~~ a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a) of this Section~~ is used, regardless of the number of ~~persons individuals on board,~~ board a vessel.
- (b) It ~~is shall be~~ unlawful to possess individual recreational possession limits in excess of the number of individuals ~~aboard on board~~ a vessel holding a valid Recreational Commercial Gear ~~Licenses License~~ except as provided in Paragraph (f) of this Rule.
- (c) It ~~is shall be~~ unlawful for any ~~person individual~~ who holds both a Recreational Commercial Gear License and a Standard or Retired Standard Commercial Fishing License and who is in possession of identified recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a), Rule .0302(a) of this Section~~ to exceed the single recreational possession limit.
- (d) It ~~is shall be~~ unlawful for ~~persons aboard individuals on board~~ a vessel collectively holding only one Recreational Commercial Gear License and any Standard Commercial Fishing License or Retired Standard Commercial Fishing License and who are in possession of any identified recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a), Rule .0302(a) of this Section~~ to exceed ~~one the single~~ recreational possession limit.
- (e) It ~~is shall be~~ unlawful to possess more than 48 quarts, heads on, or 30 quarts, heads off, of shrimp when only one ~~person aboard individual on board~~ a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a) of this Section~~ is used.
- (f) It ~~is shall be~~ unlawful to possess more than 96 quarts, heads ~~on on,~~ or 60 quarts, heads off, of shrimp if more than one ~~person aboard individual on board~~ a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing

equipment as ~~defined~~ described in ~~45A NCAC 030 Rule .0302(a)~~ of this Section is used.

Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 143B-289.52.

SECTION .0400 – STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY

15A NCAC 030 .0401 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

(a) The ~~Chairman Chair~~ of the Marine Fisheries Commission, the Secretary of the Department of ~~Environment and Natural Resources, Environmental Quality,~~ and the ~~Fisheries Director of the Division of Marine Fisheries~~ may each name a designee and an alternate designee to serve on the Standard Commercial Fishing License Eligibility Board as their representative in their absence.

(b) The Standard Commercial Fishing License Eligibility Board shall not review an application for eligibility without a quorum of the Eligibility Board members or designees being present. Two or more members of the Standard Commercial Fishing License Eligibility Board or their designees constitute a quorum.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0402 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS

(a) Application forms for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall be are available at all offices of the Division of Marine Fisheries and online at <https://deq.nc.gov/about/divisions/marine-fisheries/licenses-permits-and-leases/commercial-fishing-licenses/eligibility-pool> and ~~must~~ shall be submitted to the Morehead City Office of the ~~Division of Marine Fisheries~~ Division, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557 for processing.

(b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry in the ~~eligibility pool~~ Standard Commercial Fishing License Eligibility Pool at any one time.

(c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing License Eligibility Pool.

(d) If an applicant has died or becomes ineligible and is subsequently selected from the ~~eligibility pool, Standard Commercial Fishing License Eligibility Pool,~~ that license eligibility shall automatically revert to the ~~eligibility pool.~~ Eligibility Pool.

(e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License ~~may not apply for pool eligibility~~ shall not be eligible to apply for a Standard Commercial Fishing License through the Standard

Commercial Fishing License Eligibility Pool for two years from the date of the last ~~transfer~~ transfer, except as provided in ~~45A NCAC 030 .0404(3).~~ Rule .0404(3) of this Section.

(f) Applicants shall notify the Division of ~~Marine Fisheries~~ within 30 days of a change of address.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0403 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD REVIEW

(a) After determination of eligibility by the Standard Commercial Fishing License Eligibility Board, applicants will be notified in writing as to the ~~applicant's~~ applicant meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.

(b) The Marine Fisheries Commission shall determine the number of licenses available from the ~~pool~~ Standard Commercial Fishing License Eligibility Pool at ~~their~~ its first regularly scheduled meeting following July 1 of each year.

(c) The Standard Commercial Fishing License Eligibility Board shall meet to review applications as often as deemed necessary by the ~~Chairman Chair~~ of the Eligibility Board.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0404 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA

In determining eligibility of an ~~application~~ applicant for the Standard Commercial Fishing License Eligibility Pool, the Standard Commercial Fishing License Eligibility Board shall apply the following criteria:

- (1) ~~Involvement in Commercial Fishing;~~ involvement in commercial fishing:
 - (a) ~~Significant~~ significant involvement in the commercial fishing industry for three of the last five years; ~~or~~
 - (b) ~~Significant~~ significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; ~~or~~
 - (c) ~~In~~ in the case of an applicant who is under 16 years of age, significant involvement in commercial fishing for two out of the last five years with a parent, legal guardian, ~~grandparent~~ grandparent, or other adult; or
 - (d) ~~Significant~~ significant involvement of the applicant's family in commercial fishing. For the purpose of this ~~Sub-item,~~ Sub-Item, family shall include mother, father, ~~brother,~~ sister, brothers, sisters, spouse, children, ~~grandparents~~ grandparents, or legal guardian.

For the purposes of this Rule, ~~significant involvement means~~ "significant involvement" shall mean persons or corporations who are

engaged in the actual taking of fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer or the dealer's employees who ~~purchases~~ purchase fish at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of ~~landing;~~ landing, those who sell or make commercial or recreational fishing ~~gear;~~ gear, those who operate bait and tackle shops unless they are engaged in the actual taking of bait for ~~sale;~~ sale, or those who work in fish markets or crab picking ~~operations;~~ operations;

(2) ~~Compliance with Applicable Laws and Regulations;~~ compliance with applicable laws, regulations, and rules:

(a) ~~The~~ the applicant shall not have any licenses, ~~endorsements or commercial fishing vessel registrations~~ endorsements, or Commercial Fishing Vessel Registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; ~~or~~

(b) ~~If~~ if selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, ~~endorsements or registrations~~ endorsements, or Commercial Fishing Vessel Registrations or the right to hold such issued by the Division of ~~Marine Fisheries~~ are suspended or revoked; ~~or~~

(c) ~~Four~~ four convictions within the last three years or the number of convictions ~~which~~ that would cause suspension or revocation of ~~license, endorsement, or registration~~ licenses, endorsements, or Commercial Fishing Vessel Registrations within the last three years shall result in the application being ~~denied;~~ denied. An applicant for the Standard Commercial Fishing License Eligibility Pool shall provide certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years; and

(d) A record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool,

the term convictions shall include ~~but not be limited to~~ any conviction for violation of any provision of Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes;~~ statutes, any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such ~~statute;~~ statute, any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes;~~ statutes, any conviction for violation of any provision of Article 7 of Chapter 143B of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes;~~ statutes, any conviction of, resist, obstruct, or delay involving a ~~Marine Patrol Officer or Wildlife Officer~~ Marine Fisheries Inspector or Wildlife Protector under G.S. 14-223; 14-223, and any conviction involving assaultive behavior toward a ~~Marine Patrol Officer~~ Marine Fisheries Inspector or other governmental official of the Department of ~~Environment and Natural Resources~~ Environmental Quality or the ~~Wildlife Resources Commission~~ Commission; ~~Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.~~

(3) ~~The~~ the responsible party shall not have transferred a Standard Commercial Fishing License granted by the ~~Standard Commercial Fishing License Eligibility Board;~~ Board; and

(4) ~~All applicants~~ an applicant for the Standard Commercial Fishing License Eligibility Pool ~~must~~ shall meet all other statutory eligibility requirements for ~~the~~ a Standard Commercial Fishing License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0405 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL APPLICATION DOCUMENTATION

(a) Documentation for ~~applications;~~ applications for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall include:

(1) ~~Statements~~ statements from individuals verifying the ~~applicant's involvement~~ applicant's involvement in commercial fishing or the commercial fishing industry, which shall contain the ~~individual's~~ individual's name, ~~address~~ address, and telephone ~~number~~ number, and ~~must be notarized;~~ the individual's signature shall be notarized;

(2) ~~Proof~~ proof of income derived from commercial fishing or the commercial fishing

industry. Proof of this income shall be tax records, records; and

- (3) The extent to which the applicant has complied with federal and state laws, regulations, and rules relating to coastal fishing and protection of the environment. Federal compliance will be verified by a notarized statement from the applicant that he the applicant has complied with federal laws.

(4)(b) All documents required by this Rule must shall be notarized.

(5)(c) Applications shall be legible and complete or they will be returned.

(6)(d) It is shall be unlawful to submit false statements on applications or supporting documents. If eligibility is based on false information provided by the applicant, this eligibility is shall be automatically revoked.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0406 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL CERTIFICATION

Annual certification to maintain an eligible application in the Standard Commercial Fishing License Eligibility Pool shall be as follows:

- (1) The the applicant shall certify that the information on his the applicant's original application is correct and that he the applicant desires to remain in the Standard Commercial Fishing License Eligibility Pool. A certification form shall be provided and mailed to the applicant at the last known address by the Division of Marine Fisheries;
(2) A certification form shall be provided and mailed to the applicant at the last known address by the Division.
(3)(2) This certification, the certification form with any changes changes, such as address, phone number, or updated fisheries involvement information since the last application or certification must certification, shall be notarized and submitted to the Division within 12 months of the initial application and annually thereafter, thereafter; and
(4)(3) Failure failure to return certification that an application is correct or with changes within 30 days from when the Division mailed the form to the applicant shall result in the application being deleted removed from the Standard Commercial Fishing License Eligibility Pool. An applicant that has been removed from the Standard Commercial Fishing License Eligibility Pool shall receive a notice from the Division.
(5) An applicant that has been deleted from the Standard Commercial Fishing License

Eligibility Pool shall receive a notice from the Division.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

SECTION .0500 - PERMITS

15A NCAC 030 .0502 PERMIT CONDITIONS; GENERAL PERMIT CONDITIONS

(a) It shall be unlawful to violate any permit condition.

(b) The following conditions shall apply to all permits issued by the Fisheries Director:

- (1) it is unlawful to it shall be unlawful to:
(A) operate under the permit except in areas, at times, and under conditions specified on the permit; permit.
(2)(B) it is unlawful to operate under a permit without having the permit or copy thereof in possession of the permittee or his or her the permittee's designees at all times of operation and the permit or copy thereof shall be ready at hand for inspection, except for a Pound Net Permits; Set Permit.
(3)(C) it is unlawful to operate under a permit without having a current valid picture identification in possession and ready at hand for inspection; inspection.
(4)(D) it is unlawful to refuse to allow inspection and sampling of a permitted activity by an agent of the Division; Division of Marine Fisheries.
(5)(E) it is unlawful to fail to provide complete and accurate information requested by the Division in connection with the permitted activity; activity.
(F) provide false information in the application for initial issuance, renewal, or transfer of a permit.
(6)(G) it is unlawful to hold a permit issued by the Fisheries Director when if not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 030 .0501; Rule .0501 of this Section.
(7)(H) it is unlawful to fail to provide reports within the timeframe required by the specific permit conditions; conditions.
(8)(I) it is unlawful to fail to keep such records and accounts as required by the rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries; fisheries.

- ~~(9)~~(J) ~~it is unlawful to~~ assign or transfer permits issued by the Fisheries Director, except for a Pound Net Permits Set Permit as authorized by 15A NCAC 03J .0504; .0504.
- (10)(2) the Fisheries Director, Director or his agent, the Fisheries Director's agent may, by conditions of the permit, ~~specify~~ impose any ~~or all~~ of the following restrictions for the permitted purposes:
- ~~(a)~~ species;
 - ~~(b)~~ quantity or size;
 - ~~(c)~~ time period;
 - ~~(e)~~ location;
 - ~~(d)~~ means and methods;
 - ~~(f)~~ disposition of resources;
 - ~~(g)~~ marking requirements; or
 - ~~(h)~~ harvest conditions.
 - (A) specify time;
 - (B) specify area;
 - (C) specify means and methods;
 - (D) specify requirements for a commercial fishing operation or for recreational purposes;
 - (E) specify record keeping and reporting requirements;
 - (F) specify season;
 - (G) specify species;
 - (H) specify size;
 - (I) specify quantity;
 - (J) specify disposition of resources;
 - (K) specify marking requirements; and
 - (L) specify harvest conditions.
- (11)(3) unless specifically stated as a condition on the permit, all statutes, ~~rules~~ rules, and proclamations shall apply to the permittee and ~~his or her designees; and the permittee's designees.~~
- (12) as a condition of accepting the permit from the Fisheries Director, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.

- (b) If a license is required to hold a permit:
- (1) all permits shall be suspended or revoked if the permittee's license privilege has been suspended or revoked as set forth in G.S. 113-171 and Rule .0114 of this Subchapter. The duration of the permit suspension or revocation shall be the same as the license suspension or revocation.
 - (2) in the event a person makes application for a new permit during any period of license or permit suspension, no new permit shall be issued during the suspension period.
 - (3) in the case of revocation of license privileges, the former licensee shall not be eligible to apply for reinstatement of a revoked permit.
- (c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be eligible to apply for reinstatement of a revoked permit for a period of six months.
- (a)(d) It shall be unlawful to violate any permit condition. For violation of specific permit conditions (as specified on the permit), permits may be suspended or revoked according to the following schedule:
- (1) violation of one specific permit condition in a ~~three-year~~ three-year period, permit shall be suspended for 10 ~~days;~~ days.
 - (2) violation of two specific permit conditions in a ~~three-year~~ three-year period, permits shall be suspended for 30 ~~days;~~ days.
 - (3) violation of three specific permit conditions in a ~~three-year~~ three-year period, permits shall be revoked for a period not less than six months.
 - (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be treated as a single violation for the purpose of suspension or revocation. If the permit condition violated is the refusal to provide information upon request by Division staff, either by telephone, in writing or in person, the Fisheries Director may suspend the permit. Such permit may be reinstated 10 days after the requested information is provided.

(b) All permits will be suspended or revoked when the permittee's license privilege has been suspended or revoked as set out in G.S. 113-171. The duration of the suspension or revocation shall be the same as the license suspension or revocation. In the event the person makes application for a new permit during any period of license suspension, no new permit will be issued during the suspension period. In case of revocation of license privileges, the minimum waiting period before application for a new permit to be considered will be six months.

(e)(e) Permit designees shall not be permitted to participate in a permit operation during any period they are under license suspension or revocation.

(f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause the

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

**15A NCAC 030 .0504 SUSPENSION/REVOCATION
SUSPENSION AND REVOCATION OF PERMITS**

(a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113, and rules of the Marine Fisheries Commission shall be subject to suspension and revocation. For the purpose of this Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance".

permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

(g) The Fisheries Director shall order summary suspension of a permit if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the permittee, whichever is later.

~~(d)~~(h) Upon service of a notice of suspension or revocation of a permit, it is shall be unlawful to fail to surrender any permit so suspended or revoked.

(i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a notice by an agent of the Fisheries Director to surrender the permit.

(j) It shall be unlawful to evade the service prescribed in this Rule.

(k) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are described in 15A NCAC 03J .0505.

Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-145.

SUBCHAPTER 03P - ~~HEARING~~ ADMINISTRATIVE PROCEDURES

SECTION .0100 - HEARING PROCEDURES

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

(a) Except in cases where summary suspension is applicable, before the Division of Marine Fisheries may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice shall be given to the license holder that the license holder may file a petition for a contested case in accordance with G.S. 113-171(e) and may request a final agency decision in accordance with G.S. 113-171(f).

~~(a)~~(b) For the purpose of this Rule and in accordance with G.S. 150B-2, "license" "permit" includes "permit" as well as "certification" and "certificate of compliance."

~~(b)~~(c) Except in cases where G.S. ~~443-474~~ 113-171, 15A NCAC 03O .0114, or summary suspension is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, permit, notice shall be given to the ~~license holder that~~ permittee that the permittee:

(1) may request an opportunity to show compliance with all requirements for retention of the permit by submitting a statement in writing to the personnel designated in the notice to commence proceedings; and

~~(1)~~(2) the license holder has a the right, through filing a request for a contested case hearing in the Office of Administrative Hearings, to a hearing before an administrative law judge, ~~judge and a final agency decision by the Marine Fisheries Commission; and~~

~~(2)~~ the license holder may request an opportunity to show compliance with all requirements for retention of the license by submitting a statement in writing to the personnel designated in the notice to commence proceedings.

~~(e)~~(d) Any statements submitted by the ~~license holder~~ permittee to show compliance with all requirements for retention of the ~~license~~ permit shall be postmarked or emailed within ~~15~~ 10 days of receipt of the notice to commence ~~proceedings~~. ~~proceedings~~, except for a permit related to endangered or threatened species or a species managed by a quota, any statements to show compliance shall be postmarked or emailed within five days of receipt of the notice to commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and ~~mailed if mailed, sent~~ to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC ~~28557~~, 28557, or if emailed, sent to the email address provided in the notice for the designated personnel.

~~(d)~~(e) Upon receipt of a statement and any supporting documentation from the ~~license holder~~, permittee, the Division shall review the statement and, within ~~15~~ 10 days, shall notify the ~~license holder~~ permittee in writing with the Division's determination whether the ~~license holder~~ permittee demonstrated compliance with all requirements for retention of the ~~license~~. ~~permit~~. In making this determination, the Division may consider criteria including material changes made enabling the ~~license holder~~ permittee to conduct the operations for which the ~~license~~ permit is held in ~~accord~~ accordance with all applicable laws and rules rules, and processing errors made by the Division.

~~(e)~~ The Division shall order summary suspension of a license if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the license holder, whichever is later.

Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23.

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

~~Administrative Contested case~~ hearings shall be held in accordance with G.S. ~~150B~~, and the administrative hearing procedures codified at 15A NCAC ~~1B .0200~~. Article 3 of Chapter 150B of the General Statutes.

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

SECTION .0200 - DECLARATORY RULINGS

15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a declaratory ruling as provided in G.S. ~~150B-4~~, 150B-4 and rules of this Section.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be ~~filed~~ submitted in writing ~~with the Director of the~~ to the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, Department of Environment and Natural Resources (DENR), 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557.

(b) All requests shall include the following:

- (1) the ~~aggrieved person's~~ petitioner's name and address;
- (2) the rule, ~~statute~~ statute, or order upon which a ruling is desired;
- (3) a ~~concise~~ concise statement as to whether the request is for a ruling ~~on~~ on:
 - (A) the validity of a ~~rule or rule~~ rule;
 - (B) ~~on~~ the applicability of a rule, ~~order~~ order, or statute to a given factual situation; or
 - (C) a conflict or inconsistency within the Commission or the Department of Environmental Quality regarding interpretation of a law or rule adopted by the Commission;
- (4) arguments or data ~~which that~~ that demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to ~~him~~; the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner; ~~and~~
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

~~(b)(c)~~ (c) A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on the applicability of a rule, order, or statute ~~must shall~~ include a description of the statement of the specific facts to a given factual situation ~~on which the ruling is to be based~~. and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the ~~aggrieved person's~~ aggrieved person's reasons for questioning the validity of the rule. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the

conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask for ~~both~~ multiple types of declaratory rulings in a single request. ~~A request for a ruling must include or be accompanied by:~~

- (1) a statement of the facts proposed for adoption by the Commission; and
- (2) a draft of the proposed ruling.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Commission Chair.

~~(e) Before deciding the merits of the request, the Commission may:~~

- (1) ~~request additional written submissions from petitioner(s);~~
- (2) ~~request a written response from the Division staff or any other person; or~~
- (3) ~~hear oral argument from the petitioner(s) and Division staff.~~

~~(d) Unless the Division waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of facts submitted by the parties.~~

~~(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

~~(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:~~

- (1) ~~the petitioner(s) and the Division cannot agree on a set of facts sufficient to support a meaningful ruling;~~
- (2) ~~there has been a similar determination in a previous contested case or declaratory ruling;~~
- (3) ~~the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or~~
- (4) ~~no genuine controversy exists as to the application of a statute or rule to the factual situation presented.~~

~~(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:~~

- (1) ~~the request for a ruling;~~
- (2) ~~any written submissions by the parties;~~
- (3) ~~the statement of facts on which the ruling was based;~~
- (4) ~~any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;~~
- (5) ~~any other matter considered by the Commission in making the decision; and~~

(6) ~~the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.~~

~~(h) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.~~

~~(i) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

15A NCAC 03P .0203 DEFINITION DISPOSITION OF REQUESTS FOR DECLARATORY RULING

(a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for declaratory ruling based on the requirements of this Section.

(b) Before the Commission decides the merits of the request, the Commission Chair may:

- (1) request additional written submissions from the petitioner;
- (2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of this Paragraph; and
- (3) request oral arguments from the petitioner or the petitioner's legal counsel.

(c) Unless the Division of Marine Fisheries waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The Division shall be allowed to present a written response and oral arguments to the Commission at a regularly scheduled meeting.

(d) The Commission shall make a decision to grant or deny the request in accordance with G.S. 150B-4.

(e) The Commission shall deny the request upon making any of the following findings:

- (1) the request is not complete;
- (2) the petitioner is not a person aggrieved;
- (3) there has been a similar determination in a previous contested case or declaratory ruling;
- (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation presented;
- (6) the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (7) the information provided by the petitioner, the Department, or any interveners does not support a determination that a rule is invalid; or
- (8) there is no material conflict or inconsistency within the Commission or Department

regarding the law or rule identified by the petitioner.

(f) The Commission shall keep a record of each declaratory ruling, which shall include the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the statement of facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(g) For purposes of Rule .0202 of this Section, a declaratory ruling shall be deemed to be "in effect" until in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered; amended, altered or repealed;
- (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) ~~until~~ the Commission changes the declaratory ruling prospectively for good reasons; prospectively; or
- (4) ~~until~~ any court sets aside the declaratory ruling in litigation between the Commission or Department of Environment and Natural Resources Environmental Quality and the party requesting the ruling, rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

SECTION .0300 - PETITIONS FOR RULEMAKING

15A NCAC 03P .0301 FORM AND CONTENTS OF PETITION PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission (~~hereinafter referred to as the Commission~~) shall make his submit the person's request in a written petition addressed to the Chairman of the Marine Fisheries Commission Chair and submitted addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Commission staff at: Marine Fisheries Commission Division of Marine Fisheries PO Box 769 Morehead City, North Carolina 28557.

(b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

- (1) the text of the proposed rule(s);
- (2) the statutory authority for the agency to promulgate the rule(s);
- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including an estimate of cost factors for persons affected by the proposed rule(s);
- (7) a description of those most likely to be affected by the proposed rule(s); and
- (8) the name(s) and address(es) of the petitioner(s).
- (1) the text of the proposed rules for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing rules;
- (3) a statement of the effect of the requested rule changes on:
 - (A) existing rules;
 - (B) existing practices in the area involved;
 - and
 - (C) those most likely to be affected by the requested rule changes; and
- (4) the name and address of the petitioner.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules;
- (2) a statement of the cost factors for persons affected by the proposed rules;
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rules; and
- (5) documents and data supporting the proposed rules.

~~(c)~~ When petitions and supporting documents and data exceed 10 pages in length, 15 copies of the entire petition and any attachments shall be submitted.

(d) In its review of the proposed rules, the Commission shall consider:

- (1) whether it has the authority to adopt the rules;
- (2) the effect of the proposed rules on existing rules, programs, and practices;
- (3) probable costs and cost factors of the proposed rules; and
- (4) the impact of the rules on the public and regulated entities.

~~(d)(e)~~ Petitions A petition failing to contain the required information shall be returned by the Marine Fisheries Commission ~~Chairman.~~ Chair.

Authority *G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20.*

15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION

(a) The Marine Fisheries Commission ~~Chairman~~ Chair may refer ~~duly submitted petitions~~ complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory ~~committee(s)~~ committees or other advisory ~~committee(s)~~ committees of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) ~~The Chairman~~ Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the ~~petition within 10 days of the assignment of the petition.~~

(c) At least 15 days before the Committee meeting, the Committee ~~Chairman~~ Chair shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) ~~The~~ If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Fisheries Director, through Division of Marine Fisheries staff, or their legal counsel may make a presentation to the Committee.

(e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations before the Committee.

~~(e)(f)~~ Interested At least 10 days before the Committee meeting, interested persons must shall request the opportunity to make a presentation to the ~~Committee(s)~~ Committees through the ~~Committee(s) chair(s).~~ Chairs of the Committees. The request shall:

- (1) state the interest of the ~~person,~~ person;
- (2) state the person=s person's position on the petition for rulemaking, rulemaking; and
- (3) be accompanied by supporting materials.

~~The Chairman of the Committee will determine whether additional interested persons make oral presentations before the Committee.~~

~~(f)~~ The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee before it makes a recommendation on the petition for rulemaking.

(g) During the ~~Committee=s~~ Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

Authority *G.S. 113-134; 113-182; 143B-289.52; 150B-20.*

15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION

(a) ~~Petitions~~ A complete petition for rulemaking, ~~when deemed complete by the Marine Fisheries Commission Chairman,~~ as set

forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.

(b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition and the Committee's recommended action shall be presented through the Chair of the Committee or other designated member of the Committee during the business session of the Commission. Unless the Commission Chair rules otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the Department of Environmental Quality, the petitioner, and the petitioner's legal counsel.

(c) For a petition not referred to a Committee, the Commission Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Commission Chair may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Commission Chair. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

(d) Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission shall:

- (1) grant the petition in writing, notify the petitioner in writing, and initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; 150B-20; or
- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) person or persons who submitted the petition.

Authority G.S. 113-134; 113-182; ~~143B-289.51~~; 143B-289.52; 150B-20.

15A NCAC 03P .0304 RECOURSE TO DENIAL OF THE PETITION

If the Marine Fisheries Commission denies the petition for rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4 of Chapter 150B of the General Statutes.

Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES

The crab spawning sanctuaries within which the taking of crabs may be restricted or prohibited are described as follows:

referenced in 15A NCAC 03L .0205 are delineated in the following coastal fishing waters:

- (1) in Areas from Barden Inlet and North:
 - (a) ~~In in~~ the Oregon Inlet Area. Beginning Area: beginning at a point on the Atlantic Ocean shore of Bodie Island 35° 47.7054' N - 75° 32.3522' W; running northeasterly to a point in the Atlantic Ocean 35° 47.9833' N - 75° 31.8500' W; running southerly to a point in the ocean 35° 46.3500' N - 75° 30.6666' W; running westerly to a point on the Atlantic Ocean shore at 35° 46.1037' N - 75° 31.2785' W; running northerly along the Atlantic shore of Pea Island to and around South Point and continuing southerly along the shore of Pamlico Sound to a point on the south point of Eagle Nest Bay at 35° 43.7085' N - 75° 30.8009' W; running westerly to a point in Pamlico Sound at 35° 43.7100' N - 75° 32.2113' W; running northerly to a point 35° 47.3992' N - 75° 34.1650' W in Pamlico Sound; running northerly to a point on Bodie Island ~~35° 48.5740' N - 75° 33.8722' W~~; 35° 48.7740' N - 75° 33.8722' W; running southerly along the shore to and around North Point at Oregon Inlet and then northerly on the Atlantic shore to the point of beginning;
 - (b) ~~In in~~ the Hatteras Inlet Area. Beginning Area: beginning at a point on the Pamlico Sound shoreline of Hatteras Island 35° 12.0846' N - 75° 43.3514' W; running northwesterly to a point in Pamlico Sound 35° 13.6361' N - 75° 45.4451' W; running southwestly to a point near Outer Green Island 35° 11.0794' N - 75° 48.4440' W; running southeasterly to a point on the Pamlico Sound shore of Ocracoke Island 35° 10.7004' N - 75° 47.9094' W; running northeasterly along the shoreline to a point on the northeastern tip of Ocracoke Island 35° 11.2340' N - 75° 46.3051' W; running southeasterly to a point in the Atlantic Ocean at 35° 10.6644' N - 75° 44.5221' W; running northeasterly to a point on the ocean shoreline of Hatteras Island ~~35° 11.7894' N - 75° 43.5946' W~~; 35° 11.7895' N - 75° 43.5947' W; running southwestly around the tip of Hatteras Island to the point of beginning;
 - (c) ~~In in~~ the Ocracoke Inlet Area. Beginning Area: beginning at a point

on Ocracoke Island 35° 06.2555' N – 75° 59.3722' W; running westerly through Shellcastle Island to a point in Pamlico Sound 35° 05.8599' N – 76° 04.3639' W; running southerly to a point on Portsmouth Island 35° 03.7378' N – 76° 04.7850' W; 35° 03.7379' N – 76° 04.7850' W; running northeasterly along the shore of Pamlico Sound around the western side of Ocracoke Inlet and southwesterly along the shore of the Atlantic Ocean to a point 35° 03.0500' N – 76° 03.0833' W; running southeasterly offshore to a point in the Atlantic Ocean 35° 02.6333' N - 76° 02.7166' W; running northeasterly to a point in the ocean 35° 03.9666' N - 75° 59.3000' W; running northwesterly to a point on the Atlantic shore of Ocracoke Island 35° 04.7402' N – 75° 59.7124' W; running southwesterly along the shore around the eastern side of Ocracoke Inlet and northeasterly along the shore to the point of beginning;

(4)(d) In the Drum Inlet Area. Beginning at a point on the Core Sound shore of Core Banks 34° 52.81101' N – 76° 17.1780' W; running northwesterly to a point in Core Sound 34° 53.7347' N – 76° 18.0439' W; running southwesterly to a point in Core Sound 34° 50.8286' N – 76° 21.2515' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 50.1496' N – 76° 20.3924' W; following the shoreline in a northeasterly direction around the western side of Drum Inlet then along the Atlantic Ocean shoreline to a point on Core Banks 34° 50.0049' N – 76° 20.3741' W; running southeasterly to a point in the Atlantic Ocean 34° 49.4995' N – 76° 19.8407' W; running northeasterly to a point in the Atlantic Ocean 34° 52.2167' N – 76° 16.7476' W; running northwesterly to a point on the ocean shore of Core Banks 34° 52.6147' N – 76° 17.0705' W; running southwesterly toward and around the eastern side of Drum Inlet, then in a northeasterly direction along the Core Sound shore of Core Sound to the point of beginning; Ophelia and Drum Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 51.7718' N - 76° 18.5093' W; running northwesterly to a point in Core Sound

34° 52.3431' N - 76° 19.1661' W; running southwesterly to a point near Marker "27" in Core Sound 34° 50.6411' N - 76° 22.0094' W; running southwesterly to a point in Core Sound 34° 49.0120' N - 76° 23.0288' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 48.6143' N - 76° 22.3033' W; following the shoreline in a northeasterly direction around the western side of Ophelia Inlet then along the Atlantic Ocean shoreline southwesterly to a point on Core Banks 34° 48.9349' N - 76° 21.4582' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Core Banks 34° 51.6790' N - 76° 18.3829' W; running southwesterly along the Atlantic Ocean shoreline toward and around the eastern side of Ophelia Inlet, then northeasterly along the Core Sound shore of Core Banks to the point of beginning; and

(5)(e) In the Bardens Inlet Area. Beginning at a point on Core Banks near the southern side of Hogpen Bay 34° 40.7047' N – 76° 29.6108' W; running westerly to a point near Marker "35" at 34° 40.7071' N – 76° 31.5922' W; running southwesterly to a point on Shackleford Banks 34° 38.9974' N – 76° 32.4858' W; running southeasterly around the eastern end of Shackleford Banks and then northwesterly along the ocean shoreline to a point on shore 34° 38.5608' N – 76° 32.6863' W; running southwesterly through Buoy "4" to Buoy "2" at the end of the Cape Lookout Jetty 34° 37.1272' N – 76° 33.7381' W; running southeasterly to the base of the Cape Lookout Jetty 34° 36.7836' N – 76° 33.1569' W; running northerly to the end of Power Squadron Spit, around Lookout Bight and northerly up Core Banks to the point of beginning; Barden Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 40.7131' N – 76° 28.9495' W; running northwesterly to a point on Harkers Island 34° 41.0674' N – 76° 31.5834' W; running southwesterly to a point on Shackleford Banks 34° 39.5418' N -

76° 34.0451' W; following the shoreline in southeasterly direction around the northern side of Barden Inlet then along the Atlantic Ocean shoreline northwesterly to a point on Shackleford Banks 34° 38.7748' N - 76° 32.8463' W; running southwesterly to a point in the Atlantic Ocean 34° 38.2938' N - 76° 33.5130' W; running southerly to a point near Buoy "2" at the end of the Cape Lookout Jetty in the Atlantic Ocean 34° 37.1253' N - 76° 33.7446' W; running southeasterly to a point on Cape Lookout 34° 36.7229' N - 76° 33.0514' W; running northerly along the Atlantic Ocean shoreline toward and around the southern side of Barden Inlet to a point on Cape Lookout 34° 36.5492' N - 76° 32.2416' W, then running northeasterly along the Core Sound shore of Core Banks to the point of beginning.

(2) in Areas from Beaufort Inlet and West and South:

(a) Beaufort Inlet Area: beginning at a point on the Back Sound side of Shackleford Banks 34° 41.0017' N - 76° 37.7538' W; running northerly to a point on Carrot Island 34° 42.3553' N - 76° 37.1124' W; running westerly along the shoreline to a point on Carrot Island 34° 42.6291' N - 76° 38.6608' W; running westerly to a point on Town Marsh 34° 42.6394' N - 76° 38.7442' W; running westerly along the shoreline to a point on Town Marsh 34° 42.7915' N - 76° 40.2489' W; running westerly to a point on Bird Shoal 34° 42.7694' N - 76° 40.4764' W; running northerly to a point on Pivers Island 34° 42.9294' N - 76° 40.4301' W; running northerly along the shoreline to a point on Pivers Island 34° 43.1892' N - 76° 40.3873' W; running northerly to a point on Radio Island 34° 43.2344' N - 76° 40.4099' W; running along the shoreline to a point on Radio Island 34° 43.2770' N - 76° 41.2422' W; running along the south side of the Highway 70 Bridge over the Newport River to a point near the Morehead City Port 34° 43.2419' N - 76° 41.7067' W; running southerly along the shore to a point near the Morehead City Port 34° 42.9560' N - 76° 41.6986' W; running southwesterly to a point on Goat Island 34° 42.7185' N - 76°

41.9145' W; running southeasterly along the shoreline to a point on Goat Island 34° 42.2031' N - 76° 41.3923' W; running southwesterly to a point on shore near Fort Macon State Park 34° 42.1709' N - 76° 41.3693' W; following the shoreline in a southwesterly direction around the western shoreline of Beaufort Inlet then along the Atlantic Ocean shoreline to a point on Bogue Banks 34° 41.6480' N - 76° 42.0986' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly then southeasterly and returning to shore parallel to a point on Shackleford Banks 34° 40.6129' N - 76° 38.1521' W; running northwesterly along the Atlantic Ocean shoreline around the eastern side of Beaufort Inlet, then running easterly along the Back Sound shore of Shackleford Banks to the point of beginning;

(b) Bogue Inlet Area: beginning at a point on Bogue Banks 34° 39.1828' N - 77° 05.8503' W; running northerly to a point 34° 40.1526' N - 77° 05.6346' W; running northerly to a point 34° 40.2531' N - 77° 05.6385' W; running westerly to a point 34° 40.2550' N - 77° 05.9450' W; running southerly to a point 34° 40.1732' N - 77° 05.9616' W; running southerly to a point 34° 39.9629' N - 77° 06.1038' W; running southerly to a point 34° 39.5209' N - 77° 06.4042; running southwesterly to a point 34° 39.0599' N - 77° 07.3287' W; running southerly to a point on Bear Island 34° 38.3856' N - 77° 07.2373'; following the shoreline in a northeasterly direction around the western shoreline of Bogue Inlet then along the Atlantic Ocean shoreline to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bogue Banks 34° 38.7491' N - 77° 05.2548' W; running southwesterly along the Atlantic Ocean shoreline around the eastern side of Bogue Inlet to a point 34° 38.7686' N - 77° 06.0596' W; running

- northerly to a point 34° 38.9900' N - 77° 06.1269' W, then running northeasterly to the point of beginning;
- (c) Bear Inlet Area: beginning at a point on Bear Island 34° 37.7852' N - 77° 09.7128' W; running northerly to a point 34° 37.8817' N - 77° 09.7698' W; running southwesterly to a point 34° 37.6695' N - 77° 10.4134' W; running northwesterly to a point 34° 37.8105' N - 77° 10.5849' W; running southwesterly to a point on Saunders Island 34° 37.4531' N - 77° 11.0624' W; running southeasterly to a point on Browns Island 34° 37.2216' N - 77° 10.8461' W; following the shoreline in northeasterly direction around the western shoreline of Bear Inlet then along the Atlantic Ocean shoreline to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Bear Inlet, then northeasterly along the shore to the point of beginning;
- (d) Browns Inlet Area: beginning at a point on Browns Island 34° 35.8978' N - 77° 13.8409' W; running northwesterly to a point 34° 36.0015' N - 77° 13.9606' W; running westerly to a point 34° 35.9360' N - 77° 14.1340' W; running southerly to a point 34° 35.6631' N - 77° 14.1270' W; following the shoreline in a northeasterly direction around the western shoreline of Browns Inlet then along the Atlantic Ocean shoreline to a point 34° 33.7692' N - 77° 16.8043' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Browns Inlet, then northerly along the shore to the point of beginning;
- (e) New River Inlet Area: beginning at a point on shore on the south side of Wards Channel 34° 32.2064' N - 77° 19.8404' W; running northwesterly to a point 34° 33.1386' N - 77° 20.8902' W; running westerly to a point 34° 33.1097' N - 77° 21.1013' W; running southeasterly to a point 34° 32.3473' N - 77° 20.6013' W; running southwesterly to a point on Topsail Island 34° 32.1096' N - 77° 20.8447' W; following the shore line in a southerly direction around the western shoreline of New River Inlet then along the Atlantic Ocean shoreline to a point 34° 31.3352' N - 77° 21.1694' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point 34° 33.7692' N - 77° 16.8043' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of New River Inlet, then northeasterly along the shore to the point of beginning;
- (f) Topsail Inlet Area: beginning at a point on Topsail Island 34° 21.9619' N - 77° 37.8381' W; running northwesterly to a point in Topsail Sound 34° 22.1071' N - 77° 37.9944' W; running southwesterly to a point near Marker "5" 34° 21.7185' N - 77° 38.3499' W; running southwesterly to a point near Marker "3" 34° 21.5798' N - 77° 38.5928' W; running southwesterly to a point near Marker "1" 34° 21.1055' N - 77° 39.1749' W; running northwesterly to a point 34° 21.2065' N - 77° 39.6127' W; running southwesterly to a point 34° 20.7450' N - 77° 40.3682' W; running southerly to a point 34° 20.3011' N - 77° 40.3728' W; following the shoreline in a northeasterly direction around the western shoreline of Topsail Inlet then along the Atlantic Ocean shoreline to a point on Lea-Hutaff Island 34° 20.0228' N - 77° 40.4332' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Topsail Island 34° 20.8762' N - 77° 38.9403' W; running southwesterly along the

- Atlantic Ocean shoreline around the eastern shore of Topsail Inlet, then northeasterly along the Topsail Sound shore of Topsail Island to the point of beginning;
- (g) Rich Inlet Area: beginning at a point on Lea-Hutaff Island 34° 18.1292' N - 77° 42.6492' W; running northwesterly to a point 34° 18.2851' N - 77° 42.9352' W; running southwesterly to a point 34° 18.0190' N - 77° 43.2798' W; running southerly to a point on Figure Eight Island 34° 17.5649' N - 77° 43.1649' W; following the shoreline in an easterly direction around the southern shoreline of Rich Inlet then along the Atlantic Ocean shoreline to a point on Figure Eight Island 34° 17.2243' N - 77° 43.2491' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Lea-Hutaff Island 34° 18.1251' N - 77° 42.4352' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Rich Inlet, then northeasterly along the shore to the point of beginning;
- (h) Mason Inlet Area: beginning at a point on Figure Eight Island 34° 14.9536' N - 77° 45.9567' W; running northwesterly to a point 34° 15.0409' N - 77° 46.1766' W; running southwesterly to a point 34° 14.8657' N - 77° 46.4044' W; running southwesterly to a point 34° 14.7256' N - 77° 46.5348' W; running southerly to a point on Shell Island 34° 14.2036' N - 77° 46.5189' W; following the shoreline in a northeasterly direction around the southern shoreline of Mason Inlet then along the Atlantic Ocean shoreline to a point on Shell Island 34° 14.1375' N - 77° 46.4263' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Figure Eight Island 34° 14.8474' N - 77° 45.7857' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Mason Inlet, then
- northeasterly along the shore to the point of beginning;
- (i) Masonboro Inlet Area: beginning at a point on Wrightsville Beach 34° 11.3446' N - 77° 48.7458' W; running northwesterly to a point 34° 11.4604' N - 77° 49.0510' W; running northwesterly to a point 34° 11.5164' N - 77° 49.2368' W; running northwesterly to a point 34° 11.5255' N - 77° 49.2652' W; running northwesterly to a point 34° 11.5700' N - 77° 49.4425' W; running southwesterly to a point 34° 11.3553' N - 77° 49.5924' W; running easterly to a point 34° 11.3737' N - 77° 49.4628' W; running easterly to a point 34° 11.3737' N - 77° 49.4345' W; following the shoreline southeasterly to a point 34° 11.2551' N - 77° 49.2287' W; running southerly to a point on Masonboro Island 34° 10.8451' N - 77° 49.0242' W; following the shoreline in an easterly direction around the southern shoreline of Masonboro Inlet through a point at the base of the jetty 34° 10.8814' N - 77° 48.7074' W; running southwesterly along the Atlantic Ocean shoreline to a point on Masonboro Island 34° 10.5221' N - 77° 49.1658' W; extending 100 yards seaward from the shoreline and the Atlantic Ocean side of the jetties from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and returning to shore parallel to a point 34° 11.5753' N - 77° 48.3061' W; running southwesterly along the Atlantic Ocean shoreline through a point at the base of the jetty 34° 11.2076' N - 77° 48.5555' W, around the northern shoreline of Masonboro Inlet then northeasterly along the shore to the point of beginning;
- (j) Carolina Beach Inlet Area: beginning at a point on Masonboro Island 34° 04.8168' N - 77° 52.8796' W; running southerly to a point 34° 04.4997' N - 77° 53.0080' W; following the shoreline in an easterly direction to a point 34° 04.5022' N - 77° 52.7982' W; running easterly to a point on Pleasure Island 34° 04.5102' N - 77° 52.7340' W; following the shoreline in an easterly direction around the southern shoreline of Carolina Beach Inlet then along the Atlantic Ocean shoreline to

a point on Pleasure Island 34° 04.3505' N - 77° 52.5048' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Masonboro Island 34° 05.2151' N - 77° 52.1472' W; running southeasterly along the Atlantic Ocean shoreline around the northern shoreline of Carolina Beach Inlet, then westerly along the shore to the point of beginning;

(k) Cape Fear River Inlet Area: beginning at a point on Bald Head Island 33° 52.7072' N - 78° 00.0449' W; running northeasterly to a point 33° 53.6135' N - 77° 59.2549' W; running northerly to a point 33° 54.4086' N - 77° 59.0330' W; running northerly to a point 33° 54.8399' N - 77° 58.9115' W; running westerly to a point at Southport 33° 54.9503' N - 78° 01.3581' W; running southerly to a point on Fort Caswell 33° 53.7948' N - 78° 01.0782' W; following the shoreline in a southerly direction around the western shoreline of Cape Fear River Inlet then westerly along the Atlantic Ocean shoreline to a point on Caswell Beach 33° 53.4293' N - 78° 01.7604' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running southerly to point near Buoy "12" 33° 51.8213' N - 78° 01.0179' W; running southeasterly to a point 33° 51.1999' N - 78° 00.0632' W; running northeasterly to a point on Bald Head Island 33° 51.3488' N - 77° 59.9222' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Cape Fear River Inlet, then northeasterly along the shore to the point of beginning;

(l) Lockwoods Folly Inlet Area: beginning at a point on Oak Island 33° 54.9392' N - 78° 13.6711' W; running northerly to a point on Sheep Island 33° 55.0837' N - 78° 13.6753' W; following the shoreline northwesterly to a point on Sheep Island 33° 55.2263' N - 78° 13.9395' W; running westerly to a point on Holden Beach 33° 55.1794' N - 78° 14.3132' W; following the shoreline in a southwesterly direction around the western shore of Lockwoods Folly

Inlet then along the Atlantic Ocean shoreline to a point on Holden Beach 33° 54.8695' N - 78° 14.6180' W; running southerly to a point in the Atlantic Ocean 33° 54.6076' N - 78° 14.6026' W; running easterly to a point in the Atlantic Ocean 33° 54.5564' N - 78° 14.0529' W; running northerly to a point on Oak Island 33° 54.8853' N - 78° 14.0041' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Lockwoods Folly Inlet, then easterly along the shore to the point of beginning;

(m) Shallotte Inlet Area: beginning at a point near Monks Island 33° 54.5773' N - 78° 22.8077' W; running southwestly to a point on Ocean Isle Beach 33° 54.2436' N - 78° 23.2758' W; following the shoreline in a southerly direction around the western shore of Shallotte Inlet then along the Atlantic Ocean shoreline to a point on Ocean Isle Beach 33° 53.8151' N - 78° 23.7753' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly and returning to shore parallel to a point on Big Beach 33° 54.1103' N - 78° 21.9540' W; running westerly along the Atlantic Ocean shoreline around the eastern shore of Shallotte Inlet, then northerly along the shore to the point of beginning; and

(n) Tubbs Inlet Area: beginning at a point on the Jinks Creek shore of Ocean Isle Beach 33° 52.5844' N - 78° 28.6583' W; running northerly to a point 33° 52.7734' N - 78° 28.7428' W; running southwestly to a point 33° 52.6815' N - 78° 29.0080' W; running southwestly to a point on the Eastern Channel shore of Sunset Beach 33° 52.3878' N - 78° 29.1301' W; following the shoreline in an easterly direction around the western shore of Tubbs Inlet then along the Atlantic Ocean shoreline to a point on Sunset Beach 33° 52.3250' N - 78° 29.1865' W; extending 100 yards seaward of the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Ocean Isle Beach 33° 52.5676' N - 78° 28.4027' W; running southwestly along the

Atlantic Ocean shoreline around the eastern shore of Tubbs Inlet then in a northerly direction along the shore to the point of beginning.

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

15A NCAC 03R .0111 PURSE SEINES PROHIBITED

The areas referenced in 15A NCAC 03J .0105(b)(1) are delineated in the following coastal fishing waters of the Atlantic Ocean:

~~(a)(1) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean within an area bounded by a line extending from a point near the Bald Head Lighthouse (33° 52.3500' N - 78° 00.3000' W) 33° 52.3500' N - 78° 00.3000' W; running southwesterly to a point near the Cape Fear River ship channel buoy "9" (33° 51.5500' N - 78° 01.5500' W), then 33° 51.5500' N - 78° 01.5500' W; running northwesterly to a point near the foot of the Yaupon Beach Fishing Pier on Oak Island (33° 54.2000' N - 78° 04.9333' W), then 33° 54.2000' N - 78° 04.9333' W; following the shoreline easterly to a point near Fort Caswell (33° 53.2166' N - 78° 01.1833' W), then 33° 53.2166' N - 78° 01.1833' W; running southeasterly back to the point of origin: beginning;~~

~~(b)(2) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean from May 1 through September 30:~~

~~(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 1.5 nautical miles to a point offshore 36° 13.8536' N - 75° 44.3814' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2225' W; running westerly to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 42.2416' W; and~~

~~(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 1.5 nautical miles to a point offshore 36° 03.3187' N - 75° 38.8029' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore of the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 29.2379' W; running westerly to a point onshore at~~

the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W; W; and

~~(e)(3) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the in the Atlantic Ocean from October 1 through December 31:~~

~~(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 0.5 nautical miles to a point offshore 36° 13.8536' N - 75° 45.6977' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point 0.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 43.5514' W; running westerly 0.5 nautical miles to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2416' W; and~~

~~(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 0.5 nautical miles to a point offshore 36° 03.3187' N - 75° 40.2033' W; running southerly parallel to and 0.5 nautical mile miles off the ocean beach to a point offshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 30.6134' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W.~~

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

15A NCAC 03R .0118 EXEMPTED CRAB POT ESCAPE RING AREAS CRAB HARVEST MANAGEMENT AREAS

The areas referenced in 15A NCAC 03J .0301(g) 03L .0201(a) and (b) are delineated in the following coastal fishing waters:

(1) ~~Pamlico Sound within the area described by a line beginning at a point 35° 43.7457' N - 75° 30.7014' W on the south shore of Eagles Nest Bay on Pea Island; running westerly to a point 35° 42.9500' N - 75° 34.1500' W; running southerly to a point 35° 39.3500' N - 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N - 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N - 75° 31.5825' W on Gull Island; running southwesterly to a point 35° 22.8671' N - 75° 33.5851' W in Avon Channel near Beacon "1AV"; running southwesterly to a point 35° 18.9603' N - 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point~~

35° 16.7588' N 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35° 14.0337' N 75° 45.9643' W southwest of Oliver Reef near the quick flashing beacon; running westerly to a point 35° 09.3650' N 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35° 08.4523' N 76° 02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35° 07.1000' N 76° 06.9000' W; running southwesterly to a point 35° 01.4985' N 76° 11.4353' W near Beacon "HL"; running southwesterly to a point 35° 00.2728' N 76° 12.1903' W near Beacon "1CS"; running southerly to a point 34° 59.5027' N 76° 12.3204' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running southwesterly to a point 34° 59.3610' N 76° 12.6040' W on Wainwright Island; running easterly to a point at 34° 58.7853' N 76° 09.8922' W on Core Banks; running easterly and northerly along the shoreline across the inlets following the COLREGS Demarcation line up the Outer Banks to the point of beginning. Northern Region: All Coastal Fishing Waters of the state north and east of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/Virginia state line.

- (2) Newport River, from April 1 through June 15 – within the area described by a line beginning at a point 34° 49.5080' N 76° 41.4440' W; running westerly along the south side of the Highway 101 Bridge over Core Creek to a point on the west shore 34° 49.5260' N 76° 41.5130' W; running along the shoreline of Newport River and its tributaries to a point 34° 49.3050' N 76° 44.2350' W; running westerly along the south side of the Highway 101 Bridge over Harlowe Canal to a point on the west shore 34° 49.2980' N 76° 44.2610' W; running along the shoreline of Newport River and its tributaries to a point 34° 45.2478' N 76° 46.4479' W; running southerly along the Inland Coastal Waters boundary line to a point 34° 45.1840' N 76° 46.4488' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.2520' N 76° 41.6840' W; running easterly along the north side of the Highway 70 Bridge over Newport River to a point 34° 43.2840' N 76° 41.2200' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.3530' N 76° 40.2080' W; running easterly across Gallant Channel to a point 34° 43.3521' N 76° 40.0871' W; running along the shoreline of Newport River and its tributaries back to the point of beginning.

Southern Region: All Coastal Fishing Waters of the State south and west of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/South Carolina state line.

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

15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS

The Ocean Artificial Reefs referenced in 15A NCAC 03J .0404 are delineated in the following Coastal Fishing Waters of the Atlantic Ocean:

- (1) AR-160: within the circular area described by a center point at 35° 43.8880' N - 75° 26.7710' W and radius extending 1,500 feet.
- (2) AR-165: within the circular area described by a center point at 35° 41.6720' N - 75° 26.3130' W and radius extending 1,500 feet.
- (3) AR-275: within the circular area described by a center point at 34° 50.0930' N - 76° 16.8800' W and radius extending 1,500 feet.
- (4) AR-315: within the circular area described by a center point at 34° 40.0850' N - 76° 44.8270' W and radius extending 3,000 feet.
- (5) AR-320: within the circular area described by a center point at 34° 39.5330' N - 76° 48.4170' W and radius extending 1,500 feet.
- (6) AR-342: within the circular area described by a center point at 34° 36.6720' N - 77° 2.1890' W and radius extending 1,500 feet.
- (7) AR-360: within the circular area described by a center point at 34° 20.9830' N - 77° 36.1830' W and radius extending 1,500 feet.
- (8) AR-364: within the circular area described by a center point at 34° 14.8060' N - 77° 42.8550' W and radius extending 1,500 feet.
- (9) AR-370: within the circular area described by a center point at 34° 10.4530' N - 77° 45.2810' W and radius extending 3,000 feet.
- (10) AR-378: within the circular area described by a center point at 34° 1.8070' N - 77° 52.0910' W and radius extending 1,500 feet.
- (11) AR-378b: within the circular area described by a center point at 34° 0.6420' N - 77° 50.6540' W and radius extending 1,500 feet.
- (12) AR-425: within the circular area described by a center point at 33° 53.0480' N - 78° 6.5250' W and radius extending 1,500 feet.
- (13) AR-430: within the circular area described by a center point at 33° 52.2560' N - 78° 09.9680' W and radius extending 1,500 feet.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0100 – HANDLING, PACKING, AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0135 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate a processing facility without a ~~permit issued by the Division; first obtaining a Crustacea Permit and Certificate of Compliance from the Division of Marine Fisheries.~~
- (b) ~~No person shall operate a repacker facility without a repacker permit issued by the Division.~~
- (~~e~~)(b) Application for a permit shall be submitted in writing ~~on an application form available from~~ to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (~~d~~)(c) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with applicable rules of this Section. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (~~e~~) ~~A permit issued to one person is not transferrable to another person.~~
- (~~f~~)(d) The permit shall be posted in a conspicuous place in the facility. ~~All permits shall expire on March 31 of each year.~~
- (~~e~~) All permits shall expire on March 31 of each year and are non-transferrable.
- (~~g~~)(f) Plans and specifications for proposed new construction, expansion of ~~operations~~ operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning ~~construction;~~ construction or making a change.
- (~~h~~)(g) A permit may be revoked or suspended ~~pursuant to G.S. 130A-23; in accordance with 15A NCAC 030 .0504.~~
- (i) ~~The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.~~

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

SECTION .0300 – SANITATION OF SHELLFISH - GENERAL

15A NCAC 18A .0302 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate any of the following facilities without a ~~permit issued by the Division; first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:~~
 - (1) ~~Depuration~~ depuration facilities;
 - (2) repacking plants;
 - (~~2~~)(3) Shellstock ~~shellstock~~ plants; and
 - (~~3~~)(4) Shucking ~~shucking~~ and packing plants; plants.
 - (4) Repacking plants.
- (b) ~~No person shall~~ It shall be unlawful to operate as a shellstock dealer without a ~~permit issued by the Division; first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.~~
- (c) ~~A permit may be issued to a reshipper when required for out of state shipment. It shall be unlawful to operate as a reshipper~~

without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.

- (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.
- (e) Application for a permit shall be submitted in writing to the ~~Division at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina, 28557. Division.~~ Application forms are available may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (f) No permit shall be issued by the Division until an inspection by the Division shows that the ~~facilities~~ facility and equipment comply with all applicable rules Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (g) All permits shall be posted in a conspicuous place in the ~~facilities.~~ All permits shall expire on April 30 of each year. facility.
- (h) All permits shall expire on April 30 of each year and are non-transferrable.
- (~~h~~)(i) Plans and specifications for proposed new ~~construction or remodeling~~ construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and ~~approval;~~ approval prior to beginning construction or making a change.
- (~~i~~)(j) A permit may be revoked or suspended ~~pursuant to G.S. 130A-23; in accordance with 15A NCAC 030 .0504.~~

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

15A NCAC 18A .0303 RELAYING PERMITS

~~If a person is granted a relaying permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for conditioning and purification prior to marketing and marketed after relaying in a large body of clean water, but only under the following conditions:~~

- (1) ~~Application for relaying must be received by the North Carolina Division of Marine Fisheries and the Division 15 days prior to relaying.~~
- (2) ~~Removal and relaying shall be under the supervision of the Division and the Division of Marine Fisheries.~~
- (3) ~~Shellfish relayed from a prohibited area to a designated area of approved water shall remain down for a period of not less than fourteen days when the water in which shellfish are relayed has a temperature above 50°F (10°C). When the water temperature is below 50°F (10°C), shellfish shall not be relayed.~~

Authority G.S. 130A-230.

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

If a person is granted a depuration harvesting permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for depuration prior to marketing and marketed after depuration in a permitted facility, but only under the following conditions:

- (1) Application for a depuration harvesting permit must be received by the Division of Marine Fisheries and the Division 15 days prior to harvesting for depuration purposes.
(2) Harvesting for depuration purposes shall be under the supervision of the Division and the Division of Marine Fisheries.

Authority G.S. 130A-230.

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0425 TAGGING DEALER TAGS

(a) In order that information may be available to the Division with reference to the origin of shellstock, Consistent with the rules of this Section, it shall be unlawful to possess containers holding shellstock shall be identified with without a uniform dealer tag or label affixed after the shellstock is processed or shipped by the initial certified shellfish dealer. The tag shall be durable, waterproof, and measure at least 2 5/8 by 5 1/4 inches (6.7 by 13.3 centimeters). a minimum of two and five-eighths inches by five and one-fourth inches in size. The It shall be unlawful for the tag shall to fail to contain legible information arranged in the specific order as follows:

- (1) the dealer's name, address, and certification number assigned by the appropriate shellfish control agency;
(2) the original shipper's certification number;
(3) the harvest date, date, or if depurated, the date of depuration processing, or if wet stored, the original harvest date, and the final harvest date, which is the date removed from wet storage;
(4) if wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";
(4)(5) the harvest location, including the country or state abbreviation; the most precise identification of the harvest location as is practicable, including the initials of the state of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);
(5) when the shellstock has been in wet storage, the statement "THIS PRODUCT WAS IN WET STORAGE AT (FACILITY

CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";

- (6) the type and quantity of shellfish; shellstock;
(7) the following statement shall appear statements in bold, capitalized type font:
(A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS;" DAYS."; and
(B) "RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) .";
(8) the following statement, or equivalent, equivalent:
"Consumer Advisory
Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat raw shellfish and become sick, see a doctor immediately." immediately."; and
(9) the following statement, or equivalent:
"Keep Refrigerated".

(b) The uniform dealer tag or label shall remain attached to the shellstock container until the container is empty and thereafter shall be kept on file file, in chronological order, for 90 days.

(c) All shellstock from a depuration facility must be identified as having been cleansed by a depuration facility identified by a name and permit number on the tag.

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

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

When the Division of Marine Fisheries begins operations to relocate shellfish from a restricted or conditionally approved area to an approved area, the Division will recommend to the Division of Marine Fisheries that the area of relocation be closed until cleansing requirements for relayed shellfish have been satisfied.

Authority G.S. 130A-230.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10H .1601.