

1 15A NCAC 03O .0201 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES**
4 **AND FRANCHISES AND WATER COLUMN LEASES**

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

8 (1) the proposed lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-201.1, or
9 have 10 bushels or more of shellfish per acre;

10 (2) the proposed lease area shall not be closer than ~~400-250 feet to~~ from a developed shoreline, shoreline
11 or a water-dependent shore-based structure, except no minimum setback is required when the area
12 to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S.
13 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped
14 ~~shoreline; and shoreline.~~ For the purposes of this Rule, a water-dependent shore-based structure
15 shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;

16 (3) ~~the proposed lease area shall not be closer than 250 feet to an existing shellfish lease;~~

17 (4) ~~the proposed lease area, either alone or when considered cumulatively with existing shellfish leases~~
18 ~~in the area, shall not interfere with navigation or with existing, traditional uses of the area; and~~

19 ~~(5)~~ (5) the proposed lease area shall not be less than one-half acre and shall not exceed 10 acres.

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

23 (c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet
24 the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

25 (1) they produce and market 10 bushels of shellfish per acre per year; and

26 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
27 per year, or a combination of cultch and seed shellfish where the percentage of required cultch
28 planted and the percentage of required seed shellfish planted totals at least 100 percent.

29 (d) Water column leases shall be terminated unless they meet the following requirements, in addition to the standards
30 in and as allowed by G.S. 113-202.1 and 113-202.2:

31 (1) they produce and market 40 bushels of shellfish per acre per year; or

32 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

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

34 (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing
35 activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and
36 franchises," or "shellfish production on leases and franchises" shall be included in the lease and
37 franchise reports required by Rule .0207 of this Section.

- 1 (2) If more than one lease or franchise is used in the production of shellfish, one of the leases or
2 franchises used in the production of the shellfish shall be designated as the producing lease or
3 franchise for those shellfish. Each bushel of shellfish shall be produced by only one lease or
4 franchise. Shellfish transplanted between leases or franchises shall be credited as planting effort on
5 only one lease or franchise.
- 6 (3) Production and marketing information and planting effort information shall be compiled and
7 averaged separately to assess compliance with the requirements of this Rule. The lease or franchise
8 shall meet both the production requirement and the planting effort requirement within the dates set
9 forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish bottom leases. The
10 lease or franchise shall meet either the production requirement or the planting effort requirement
11 within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for water
12 column leases.
- 13 (4) All bushel measurements shall be in standard U.S. bushels.
- 14 (5) In determining production and marketing averages and planting effort averages for information not
15 reported in bushel measurements, the following conversion factors shall be used:
- 16 (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
17 (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds
18 of fossil stone equal one bushel.
- 19 (6) Production and marketing rate averages shall be computed irrespective of transfer of the lease or
20 franchise. The production and marketing rates shall be averaged for the following situations using
21 the time periods described:
- 22 (A) for an initial bottom lease or franchise, over the consecutive full calendar years remaining
23 on the bottom lease or franchise contract after December 31 following the second
24 anniversary of the initial bottom lease or franchise;
- 25 (B) for a renewal bottom lease or franchise, over the consecutive full calendar years beginning
26 January 1 of the final year of the previous bottom lease or franchise term and ending
27 December 31 of the final year of the current bottom lease or franchise contract;
- 28 (C) for a water column lease, over the first five-year period for an initial water column lease
29 and over the most recent five-year period thereafter for a renewal water column lease; or
30 (D) for a bottom lease or franchise issued an extension period under Rule .0208 of this Section,
31 over the most recent five-year period.
- 32 (7) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production
33 history for the portion obtained shall be a percentage of the originating lease or franchise production
34 equal to the percentage of the area of lease or franchise site obtained to the area of the originating
35 lease or franchise.

1 (f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the
2 requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease
3 acreage to the Division of Marine Fisheries.
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5 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206;*
6 *143B-289.52;*
7 *Eff. January 1, 1991;*
8 *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*
9 *Temporary Amendment Eff. October 1, 2001;*
10 *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;*
11 *Readopted Eff. April 1, 2021.*

1 15A NCAC 03O .0202 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS**

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

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

- 11 (1) ~~States state~~ the methods through which the applicant will cultivate and produce shellfish consistent
12 with the minimum requirements set forth in 15A NCAC 03O .0201; in accordance with Rule .0201
13 of this Section;
- 14 (2) ~~States state~~ the time intervals during which various phases of the cultivation and production plan
15 will be achieved;
- 16 (3) ~~States state~~ the materials and techniques that will be utilized in management of the lease;
- 17 (4) ~~Forecasts forecast~~ the results expected to be achieved by the management activities; and
- 18 (5) ~~Describes describe~~ the productivity of any other leases or franchises held by the applicant; applicant;
19 and
- 20 (6) state the locations of each corner defining the area to be leased with no more than eight corners.

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

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

- 30 (1) ~~the shellfish lease application process;~~
- 31 (2) ~~shellfish lease planting and production requirements;~~
- 32 (3) ~~lease marking requirements;~~
- 33 (4) ~~lease fees;~~
- 34 (5) ~~shellfish harvest area closures due to pollution;~~
- 35 (6) ~~safe handling practices;~~
- 36 (7) ~~lease contracts and renewals;~~
- 37 (8) ~~lease termination criteria; and~~

1 ~~(9) shellfish cultivation techniques.~~

2 (1) shellfish lease application process;

3 (2) shellfish lease requirements and techniques;

4 (3) shellfish sanitation and National Shellfish Sanitation Program requirements;

5 (4) shellfish harvest requirements;

6 (5) aquaculture permits;

7 (6) best management practices; and

8 (7) shellfish lease user conflict avoidance.

9 (e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall
10 identify the area for which a lease is requested with stakes at each corner in accordance with ~~15A NCAC 030~~
11 ~~.0204(a)(1)(A); Rule .0204(a)(1)(A) of this Section.~~ The applicant shall attach to each stake a sign, provided by the
12 Division containing the name of the applicant, the date the application was filed, and the estimated acres. The applicant
13 shall be responsible for ensuring the sign remains in place until the lease application process is completed.

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15 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;*

16 *Eff. January 1, 1991;*

17 *Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991;*

18 *Readopted Eff. April 1, 2021.*

1 15A NCAC 03O .0204 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND WATER COLUMN LEASES AND**
4 **FRANCHISES**

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

7 (1) Shellfish bottom leases and franchises shall be marked by:

8 (A) ~~Stakes~~ stakes of wood or plastic material ~~at least three inches in diameter no less than three~~
9 inches in diameter and no more than 12 inches in diameter at the ~~water level~~ mean high
10 water mark and extending at least four feet above the ~~mean high water mark~~ mark for each
11 corner, except stakes more than 12 inches in diameter approved as part of a Coastal Area
12 Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 shall
13 be allowed. The stakes shall be firmly jettted or driven into the bottom at each ~~corner~~ corner
14 as set forth in Rule .0202(b)(6) of this Section.

15 (B) ~~Signs~~ signs displaying the number of the lease or franchise and the name of the owner
16 printed in letters at least three inches high must be firmly attached to each corner stake.

17 (C) yellow light reflective tape or yellow light reflective devices on each corner stake. The
18 yellow light reflective tape or yellow light reflective devices shall be affixed to each corner
19 stake, shall cover a vertical distance of not less than 12 inches, and shall be visible from all
20 directions.

21 ~~(C)(D)~~ Supplementary ~~supplementary~~ stakes of wood or plastic ~~material, material~~ no less than
22 three inches in diameter and no more than four inches in diameter, not farther apart than
23 50 yards ~~150 feet~~ or closer together than 50 feet and extending at least four feet above the
24 mean high water mark, must shall be placed along each boundary, except ~~when such would~~
25 interfere if doing so interferes with the use of traditional navigation channels.

26 (2) ~~Water-Shellfish~~ water column leases shall be marked ~~by anchoring two yellow buoys, meeting the~~
27 ~~material and minimum size requirements specified in 15A NCAC 3J .0103(b)~~ at each corner of the
28 ~~area or by larger buoys, posts and by signs giving notice and providing caution in addition to the~~
29 required signs as identified and approved by the Secretary in the ~~Management Plan~~ management
30 plan.

31 (b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management
32 plan, ~~must shall~~ conform to ~~Subparagraph (a)(1)(C)~~ Part (a)(1)(D) of this Rule and may not exceed one for each 1,200
33 square feet. Marking at concentrations of stakes greater than one for each 1,200 square feet constitutes use of the water
34 column and a water column lease is required in accordance with G.S. 113-202.1 or G.S. 113-202.2.

35 (c) All areas claimed in filings made pursuant to G.S. 113-205 as dedeed bottoms through oyster grants issued by the
36 county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be

1 marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather
2 than the number of the lease. However, claimed areas not being managed and cultivated shall not be marked.

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

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

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

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11 *History Note: Authority G.S. 76-40; 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205;*

12 *143B-289.52;*

13 *Eff. January 1, 1991;*

14 *Amended Eff. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991;*

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