

**N.C. Marine Fisheries Commission Rules Effective April 1, 2021**  
**Form 0300 Notice of Text (Attachment)**  
**7. Explain Reason for Proposed Rule(s):**

**15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES**  
**15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS**  
**15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND FRANCHISES**

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

**15A NCAC 03Q .0101 SCOPE AND PURPOSE**  
**15A NCAC 03Q .0102 INLAND FISHING WATERS**  
**15A NCAC 03Q .0103 COASTAL FISHING WATERS**  
**15A NCAC 03Q .0104 JOINT FISHING WATERS**  
**15A NCAC 03Q .0105 POSTING DIVIDING LINES**  
**15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS**  
**15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS**  
**15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT WATERS**  
**15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING**

In accordance with G.S. 150B-21.3A, these nine rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters are proposed for re-adoption by the N.C. Marine Fisheries Commission with no changes.

**15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS**  
**15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS**

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

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

This rule is proposed for amendment consistent with the N.C. Oyster Fishery Management Plan. Rule amendments are proposed to add the boundaries of the five most recently developed oyster sanctuaries (i.e., Long Shoal, Little Creek, Pea Island, Raccoon Island, and Swan Island) and update boundaries for three existing sanctuaries (i.e., Neuse River, West Bluff, and Gibbs Shoal). Boundaries delineating the area for two existing sanctuaries (i.e., Ocracoke and Clam Shoal) are proposed to be removed from rule as they no longer function as biologically productive oyster sanctuaries. The term “sanctuary” refers to reefs protected from oyster harvest in N.C. Marine Fisheries Commission (MFC) rule or by proclamation issued by the Fisheries Director under the authority of MFC rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

**15A NCAC 18A .0903 SANITARY SURVEYS**

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

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

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

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

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

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

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

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

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

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

**15A NCAC 18A .0909 BUFFER ZONE**

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

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

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