

**Fiscal Analysis for Proposed Readoption and Amendments to 15A NCAC 03 Rules Related to Permit and License Suspensions and Revocations and Pound Net Gears Pursuant to G.S. 150B-21.3A**

**Rule Amendments:** 15A NCAC 03I .0105  
15A NCAC 03J .0501-.0505  
15A NCAC 03O .0111, .0114, .0502, .0504  
15A NCAC 03P .0101

**Name of Commission:** N.C. Marine Fisheries Commission

**Agency Contact:** David Dietz, Fisheries Economics Program Manager  
N.C. Division of Marine Fisheries  
3441 Arendell Street  
Morehead City, NC 28557  
919-707-8573  
David.Dietz@ncdenr.gov

**Impact Summary:** State government: Yes  
Local government: No  
Federal government: No  
Substantial impact: No

**Authority:**

North Carolina General Statutes

G.S. 113-134.	Rules.
G.S. 113-137.	Search on arrest; seizure and confiscation of property; disposition of confiscated property.
G.S. 113-168.1.	General provisions governing licenses and endorsements.
G.S. 113-169.1.	Permits for gear, equipment, and other specialized activities authorized.
G.S. 113-171.	Suspension, revocation, and reissuance of licenses.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-202.	New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
G.S. 113-210.	Under dock oyster culture.
G.S. 113-221.1.	Proclamations: emergency review.
G.S. 143B-289.52.	Marine Fisheries Commission - powers and duties.
G.S. 150B-3.	Special provisions on licensing.
G.S. 150B-23.	Commencement; assignment of administrative law judge; hearing required; notice; intervention.

## **I. Necessity:**

General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. Eleven rules in 15A NCAC 03I, 03J, 03O, and 03P related to license and permit suspension and revocation, as well as Pound Net Set Permits, are proposed for readoption pursuant to this requirement. Additionally, proposed changes conform the rules to the requirements of G.S. 113-171 (Suspension, revocation, and reissuance of licenses) and the Administrative Procedure Act (APA), G.S. 150B, primarily G.S. 150B-2 (Definitions), G.S. 150B-3 (Special provisions on licensing), and G.S. 150B-23 (Commencement; assignment of administrative law judge; hearing required; notice; intervention). Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. Minor technical and clarifying changes are also proposed to the rules.

## **II. Summary**

Proposed changes seek to conform rules related to permit and license suspensions and revocations, as well as Pound Net Set Permits, to standards of the APA and to increase clarity of rules. Across all rules proposed for readoption, the majority of changes are conforming and clarifying changes that incur no impact to the state. 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, provide administrative alternatives to increase overall Division of Marine Fisheries (Division) efficiency, and also propose changes to a flounder Pound Net Set Permit requirement in order to stay in compliance with the requirements of Amendment 2 to the Southern Flounder Fishery Management Plan (FMP). In all, these proposed changes provide benefits in terms of increased Division efficiency and increased protection of marine resources. However, while all of these benefits cannot be accurately quantified, the total impact is not significant to the state. No additional impacts to enforcement are anticipated.

## **III. Introduction and Purpose of Rule Changes**

Proposed rules for readoption all relate to license and permit revocation and suspension or pound net permitting, and have been compiled into a single analysis given the similarity of rule language and context. Overall, the broad goal of proposed changes is to conform rules with the APA, as well as to increase the logic, efficiency, and clarity of rules relating to license and permit revocation and suspension.

The stated purpose of the APA is to establish "a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rulemaking, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process (G.S. 150B-1(a))." Part of the APA provides special provisions on licensing (G.S. 150B-3) and defines "license" to mean any certificate or permit of a right or privilege to engage in any activity, with certain exclusions (G.S. 150B-2(3)).

The Marine Fisheries Commission (MFC) has rules related to license, permit, and certificate suspension and revocation and one rule for requesting a review for license, permit, or certificate denial (15A NCAC 03P .0101). Proposed amendments conform these rules to the APA and other

authorizing statutes. Additionally, proposed changes to 15A NCAC 03O .0504 (Suspension and Revocation of Permits) make it consistent not only with the authorizing statutes but with the similar rule for licenses (15A NCAC 03O .0114). These changes result in consistent procedures for all licensees and permittees, helping to ensure their rights under the laws as well as to protect the resource. Additional minor changes to three other related rules (15A NCAC 03I .0105, 03O .0111, .0502) and five rules for Pound Net Set Permits (15A NCAC 03J .0500) result in a more streamlined and effective process for license and permit suspension and revocation overall.

When convictions occur and lead to license or permit suspension or revocation, these process improvements will result in a consistent and timely mechanism to suspend or revoke someone's rights for protection of the resource, as well as for fairness for law-abiding stakeholders. The management of estuarine and marine resources, including:

- Fishery Management Plans (G.S. 113-182.1);
- Coastal Habitat Protection Plans (G.S. 143B-279.8);
- Cultivation of Shellfish (Chapter 113, Article 16);
- Marine Aquaculture (Chapter 113-Article 16A);
- Recent changes to provide further support to the shellfish aquaculture industry in the state (S.L. 2019-37); and
- Protection of endangered or threatened species under the Endangered Species Act, increasingly rely on the flexibility provided by permits. Proposed rule changes will help to keep pace with this flexibility. The process improvements overall will result in enhanced protection of the resource while upholding the rights of an individual licensee or permittee.

Many of the proposed changes across these rules contain clarifying or technical changes with no anticipated impact. Proposed changes with expected impacts are summarized below.

In 15A NCAC 03O .0111, new paragraph (c) is proposed to address the rare situation if the Division issues a license in error. Proposed changes establish the authority in rule for such a license to be required to be surrendered immediately upon service by an agent of the Division Director to the stakeholder to surrender the license. Existing rule 03O .0110 addresses refund of any license fees in such an instance.

Proposed changes to 15A NCAC 03O .0504 update the rule so it is reflective of all three of the situations that can result in suspension or revocation of a permit:

- New Paragraph (a) clarifies that all permits are subject to suspension and revocation. New Paragraphs (b) and (c) cover the first situation when license suspension or revocation causes permit suspension or revocation. Paragraph (b) of the current rule contains an outdated reference to a six-month waiting period before application for a new permit following license revocation.
- New Paragraph (d) covers the second situation that can result in suspension or revocation of a permit: standard permit suspension or revocation for violation of permit conditions. This Paragraph makes it unlawful to violate any permit conditions. New requirements for service and reinstatement of permits, consistent with similar requirements for licenses in related rules are also proposed.
- New Paragraph (g) covers the third and final situation that can result in suspension or revocation of a permit: summary suspension, which is a rare event. Amendments to

Paragraph (h) and new Paragraph (i) clarify requirements for surrender of a permit that has been suspended, revoked, or issued in error by the Division. New Paragraph (j) states it shall be unlawful to evade the service prescribed in this rule, consistent with the rule for license suspension and revocation. Finally, new Paragraph (k) covers the requirements of the permittee set out in G.S. 113-202 for the removal of all gear upon revocation or denial of a permit, as well as termination of a shellfish lease.

In 15A NCAC 03P .0101, proposed changes conform the rule to the requirements of the APA and G.S. 113-171 for license suspension and revocation. Proposed changes separate license requirements from permit requirements and clarify that a permit includes a certification and a certificate of compliance, again consistent with the APA. Proposed changes to Paragraph (d) add the ability for a statement to be sent to the Division by electronic mail, not just via U.S. mail. Subsequent changes shorten the time period from 15 days to 10 days to reflect the flexibility electronic mail provides and to ensure timely protection of the resources under the authority of the MFC. For the protection of endangered or threatened species or a species managed by a quota, the time period is further shortened to five days, consistent with the severity of a possible violation leading to permit or license suspension or revocation.

Lastly, 15A NCAC 03J .0501 proposes changes to pound net permit uses based on recent developments in the Southern Flounder Fishery Management Plan in terms of shortened seasons and related management measures. Paragraph (b) of this rule currently requires a pound net used in a commercial fishing operation to be operational for a minimum of 30 consecutive days during the Pound Net Set Permit period. Since the adoption of Amendment 2, the commercial flounder seasons have been less than 30 days, creating a situation where it is not possible for a flounder pound net permittee to comply with the 30-day set requirement. Proposed changes delegate specific proclamation authority to the Division Director to waive this requirement when either a quota is met or for compliance with the N.C. Southern Flounder FMP, allowing the Division Director to address a flounder pound net set that cannot be set for the minimum period due to this FMP. The proposed changes would codify what has been handled by a policy exception since the adoption of Amendment 2 and provide a pathway for management in the future under Amendment 3 when quotas are expected to be implemented. This adds clarity to the rule for stakeholders and enforcement.

#### **IV. Fiscal Impact Analysis**

As proposed rule changes seek to conform with APA requirements and increase logic and efficiency of license and permit revocation and suspension processes, the overall thrust of impact to the state is a flow of non-quantifiable benefits related to increased efficiency and resource protection.

Proposed protocols to surrender licenses issued in error as part of 15A NCAC 03O .0111 should yield small benefits to the state in the form of increased efficiency and the elimination of risk from stakeholders using an erroneous license. As mentioned, this is a rare instance, and the benefit should not be considered significant.

In 15A NCAC 03O .0504, a series of proposed changes seeks to add clarity and context to the three unique situations that can result in suspension or revocation of a permit. While these proposed changes will not impact requirements or processes for permit revocations and suspensions, they will add significant clarity to Division staff and stakeholders on these conditions. This improved clarity will yield time savings to the state, though the overall benefit should not be significant.

Proposed changes to 15A NCAC 03P .0101 also yields similar time-cost benefits to the state due to clarifications between license and permit requirements, aiding in administration for the Division and its stakeholders. However, other proposed changes in the rule should yield other benefits as well. Firstly, proposed changes to allow stakeholders to email statements demonstrating compliance with license or permit requirements directly to the Division, as opposed to using U.S. mail, both reduces physical costs to stakeholders and the state and also increases overall efficiency, generating additional benefits. Additionally, the time window to submit statements of compliance is proposed to be shortened from 15 days to 10 days, and then to five days for permits or licenses related to protected species or quotas. Not only will these shortened timelines yield a benefit to the state from increased efficiency, they will also generate increased protections for marine resources in the state, especially those with a protected status. As this timeline shift yields just five or 10 additional days, this protection benefit is not expected to be significant. Additionally, the total benefit from proposed changes to 15A NCAC 03P .0101 is not significant as well.

Lastly, the proposed changes to 15A NCAC 03J .0501 yields insignificant benefits to the state. Overall, the proposed rule grants narrow proclamation authority for the Division Director to waive the 30-day pound net set requirements for the southern flounder fishery that has seasons that are less than 30 days in length. In terms of benefits, not only will this improve biological outcomes for the state's southern flounder fishery, but it also helps uphold the requirements of Amendment 2 to the Southern Flounder FMP, leading to administrative benefits for Division staff in the future. While the benefits mentioned from this proposed change cannot be accurately quantified at this time, the total combination of these impacts is not significant. Finally, no additional costs to enforcement are expected across all proposed changes.

## V. Appendix

### Proposed Rules for Readoption

15A NCAC 03I .0105 is proposed for readoption with substantive changes as follows:

#### 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~~ Coastal Fishing Waters when such devices are not being employed in commercial fishing ~~operations~~ operations, except as otherwise provided by rule or General Statute.

(b) It ~~is~~ shall be unlawful to leave pots in any ~~coastal fishing waters~~ Coastal Fishing Waters for more than five consecutive ~~days~~ days when such pots are not being employed in commercial fishing operations, except upon a timely and sufficient showing of hardship as defined in ~~Subparagraph (b)(2)~~ Paragraph (c) of this Rule or as otherwise provided by General Statute. ~~(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 the pot within five days of attachment in order to demonstrate that the pot is being employed in commercial fishing operations.

~~(c) (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 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 G.S. 113-168.6, or the death, ~~illness~~ illness, or incapacity of the owner of the pot or ~~his~~ their immediate ~~family~~ family as defined in G.S. 113-168, prevented or will prevent employing such pots in commercial fishing operations 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~~ Coastal Fishing Waters for five consecutive days without being employed in commercial fishing operations, and shall state, in addition to the following, the number and specific location of the pots, and the date on which the pots will be employed in commercial fishing operations or removed from ~~coastal fishing waters~~ Coastal Fishing Waters:

~~(A)~~ (1) in case of mechanical breakdown, the notice shall state the commercial fishing vessel registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, 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 case of the death, ~~illness~~ illness, or incapacity of the owner of the pot or ~~his~~ their immediate family, the notice shall state the name of the owner or immediate family ~~member~~ member and either the date of ~~death~~ 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.

~~(d) (3)~~—The Fisheries Director may, by proclamation, modify the ~~five-day~~ five-day requirement, if necessary due to hurricanes, severe ~~weather~~ weather, or other variable conditions. Failure to employ in commercial fishing operations

or remove from ~~coastal fishing waters~~ Coastal Fishing Waters all pots for which notice of hardship is received under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule.

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

*History Note: Authority G.S. 113-134; 113-137; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996;  
Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996;  
Amended Eff. April 1, 1997;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. September 1, 2005; August 1, 2000;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0501 is proposed for readoption with substantive changes as follows:

## 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" shall mean 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-Ocean, a location identification buoy placed at each end of a proposed new location.~~
- ~~(2) "Flounder pound net" shall mean 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.~~
- ~~(4)(3) Operational pound net set. A "Operational pound net set" shall mean 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" shall mean from the date of issuance of a new or renewal Pound Net Set Permit to the expiration date.~~
- ~~(5) "Pound Net Set Permit" shall mean 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" shall mean 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) 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.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;*

*Eff. April 1, 2009;*

*Readopted Eff. May 1, 2022 (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03J .0502 is proposed for readoption with substantive changes as follows:

**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 03O .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .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.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
Eff. April 1, 2009;  
Readopted Eff. May 1, 2022.*

15A NCAC 03J .0503 is proposed for readoption with substantive changes as follows:

**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.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
Eff. April 1, 2009;  
Readopted Eff. May 1, 2022.*

15A NCAC 03J .0504 is proposed for reoption with substantive changes as follows:

**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.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
Eff. April 1, 2009;  
Readopted Eff. May 1, 2022.*

15A NCAC 03J .0505 is proposed for readoption with substantive changes as follows:

**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.

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
Eff. April 1, 2009;  
Readopted Eff. May 1, 2022.*

15A NCAC 03O .0111 is proposed for readoption with substantive changes as follows:

**15A NCAC 03O .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. ~~413-171~~, 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.

*History Note: Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145;  
Temporary Adoption Eff. July 1, 1999;  
Eff. August 1, 2000;  
Amended Eff. October 1, 2012;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*



15A NCAC 03O .0114 is proposed for readoption with substantive changes as follows:

**15A NCAC 03O .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~~ 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.

*History Note: Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145;  
Eff. October 1, 2012;  
Amended Eff. May 1, 2017;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03O .0502 is proposed for readoption with substantive changes as follows:

**15A NCAC 03O .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 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.
  - ~~(6)(G) it is unlawful to~~ provide false information in the application for initial issuance, renewal, or transfer of a permit.
  - ~~(7)(H) 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 03O .0501; Rule .0501 of this Section.
  - ~~(8)(I) it is unlawful to~~ fail to provide reports within the timeframe required by the specific permit conditions; conditions.
  - ~~(9)(J) it is unlawful to~~ fail to keep such records and accounts as required by the rules-Rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries; fisheries.
  - ~~(10)(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, their 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 their 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.~~

*History Note: Authority G.S. 113-134; 113-169.1; 113-182; 113-210; 143B-289.52;*

*Temporary Adoption Eff. May 1, 2000;*

*Eff. April 1, 2001;*

*Amended Eff. April 1, 2009; September 1, 2005;*

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

15A NCAC 03O .0504 is proposed for readoption with substantive changes as follows:

**15A NCAC 03O .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.

(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 15A NCAC 03O .0114. 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 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.

~~(h)~~ (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.

*History Note: Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-145;*

*Temporary Adoption Eff. May 1, 2000;*

*Eff. April 1, 2001;*

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

15A NCAC 03P .0101 is proposed for readoption with substantive changes as follows:

## **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. ~~113-171~~ 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.

~~(c)(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 ~~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.~~

*History Note:* Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23;  
Eff. January 1, 1991;  
Amended Eff. May 1, 2017; August 1, 1999;  
Readopted Eff. May 1, 2022.