

1 15A NCAC 03I .0105 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED**

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

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

9 ~~(b)(c)~~ (c) It shall be unlawful to leave pots in Coastal Fishing Waters for more than five  
10 consecutive ~~days, when~~ days if such pots are not being employed in commercial fishing operations, except upon a  
11 timely and sufficient showing of hardship as ~~defined set forth in Subparagraph (b)(2) Paragraph (c)~~ of this Rule or as  
12 otherwise provided by General Statute. The Fisheries Director may, by proclamation, modify the five-day requirement  
13 if necessary due to hurricanes, tropical storms, other severe weather events recognized by the National Weather  
14 Service, or other variable conditions pursuant to 15A NCAC 03H .0103. (1)—Agents of the Fisheries Director  
15 may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification  
16 of unattended pots. Any such device attached to a pot by agents of the Fisheries Director ~~must shall~~ be removed by  
17 the individual ~~utilizing~~ using the pot within five days of attachment in order to demonstrate that the pot is being  
18 employed in commercial fishing operations.

19 ~~(d) (2)~~ For the purposes of Paragraph (b) of this Rule only, purpose of this Rule, a timely and sufficient showing of  
20 hardship in a commercial fishing operation shall be written notice given a statement in writing from the owner of the  
21 pot or the owner's immediate family, as defined in G.S. 113-168, submitted to the Fisheries Director that a mechanical  
22 breakdown of the pot owner's vessel(s) vessel currently registered with the Division of Marine Fisheries under  
23 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  
24 immediate family, as defined in G.S. 113-168, family prevented or will prevent employing such pots in commercial  
25 fishing operations for more than five consecutive days. The notice, specifying the time needed because of hardship,  
26 shall be received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days  
27 without being employed in fishing operations, and shall state, in addition to the following, Statements and supporting  
28 documentation shall be mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead  
29 City, NC 28557. Mailing a statement does not automatically exempt a fisherman from the requirements of this Rule.  
30 The statement shall specify the number and specific location of the pots, and the date on by which the pots will be  
31 employed in commercial fishing operations or removed from coastal fishing waters: Coastal Fishing Waters, and:

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

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

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

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

13  
14 *History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;*

15 *Eff. January 1, 1991;*

16 *Amended Eff. March 1, 1996;*

17 *Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996;*

18 *Amended Eff. April 1, 1997;*

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

20 *Amended Eff. September 1, 2005; August 1, 2000;*

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

1 15A NCAC 03J .0501 is proposed for readoption with substantive changes as follows:

2  
3 **SECTION .0500 – POUND NETS**  
4

5 **15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS**

6 (a) ~~For the purpose of this Section the following terms are hereby defined:~~The following definitions shall apply to  
7 this Section:

8 ~~(1) Pound Net Set Permit. A Division authorization to set and fish a pound net set in a commercial~~  
9 ~~fishing operation in a specified location in a specified fishery.~~

10 ~~(2) Permit period. One year from the date of issuance of a new or renewal pound net set permit.~~

11 ~~(3)(1) Deployed pound net. Setting "Deployed pound net" means setting of any part of a pound net, net~~  
12 ~~except for a location identification stake or or, for a pound net used in the Atlantic Ocean-Ocean, a~~  
13 ~~location identification buoy placed at each end of a proposed new location.~~

14 ~~(2) "Flounder pound net" means a pound net set that produces a catch consisting of 50 percent or more~~  
15 ~~flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds~~  
16 ~~(holding pen) constructed of four inch stretch mesh or greater.~~

17 ~~(4)(3) Operational pound net set. A "Operational pound net set" means a pound net set as defined in 15A~~  
18 ~~NCAC 03I .0101 and deployed according to rules and permit conditions with net attached to stakes~~  
19 ~~or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-~~  
20 ~~restricted opening leading into the pound such that the set is able to catch and hold fish.~~

21 ~~(4) "Permit period" means from the date of issuance of a new or renewal Pound Net Set Permit to the~~  
22 ~~expiration date.~~

23 ~~(5) "Pound Net Set Permit" means a Division of Marine Fisheries authorization to set and fish a pound~~  
24 ~~net set in a commercial fishing operation in a specified location in a specified fishery.~~

25 ~~(5) Flounder pound net. A pound net set that produces a catch consisting of 50 percent or more flounder~~  
26 ~~by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding~~  
27 ~~pen) constructed of four inch stretch mesh or greater.~~

28 ~~(6) Shrimp pound net. A "Shrimp pound net" means a pound net set with all pounds (holding pen)~~  
29 ~~constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal~~  
30 ~~to two inches.~~

31 (b) ~~It is shall be~~ unlawful for a pound net used in a commercial fishing operation to:

32 ~~(1) Be be~~ deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.

33 ~~(2) Fail fail~~ to be operational for a minimum of 30 consecutive days during the ~~pound net set permit~~  
34 ~~period unless Pound Net Set Permit period, except the Fisheries Director may, by proclamation,~~  
35 ~~waive this requirement if~~ a season for the fishery for which the pound net set is permitted is ended  
36 earlier due to a quota being ~~met met~~ or for compliance with the N.C. Southern Flounder Fishery  
37 Management Plan.

1 (c) It ~~is shall be~~ unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:

2 (1) ~~Have have~~ the permittee's identification legibly printed on a sign no less than six inches square,  
3 securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the  
4 Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow ~~buoy, which~~  
5 buoy that shall be of solid foam or other solid buoyant material no less than five inches in diameter  
6 and no less than 11 inches in length. The permittee's identification shall be legibly printed on the  
7 buoy. The identification on signs or buoys shall include the Pound Net Set Permit number and the  
8 permittee's last name and initials.

9 (2) ~~Have have~~ yellow light reflective tape or yellow light reflective devices on each pound. The yellow  
10 light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three  
11 inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less  
12 than 12 inches, and shall be visible from all directions.

13 (3) ~~Have have~~ a marked navigational opening at least 25 feet wide at the end of every third pound. The  
14 opening shall be marked with yellow light reflective tape or yellow light reflective devices on each  
15 side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed  
16 to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12  
17 inches, and shall be visible from all directions.

18 If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy  
19 the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

20 (d) It ~~is shall be~~ unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in  
21 15A NCAC 030 ~~.0302 (a)(8) .0302(a)(8)~~ in coastal fishing waters unless the shrimp pound net is:

22 (1) ~~Marked marked~~ by attaching to the offshore lead, ~~one a~~ floating buoy, any shade of hot pink in ~~color,~~  
23 which is color. Buoys shall be of solid foam or other solid buoyant material no less than five inches  
24 in diameter and no less than five inches in length. The ~~owner-gear owner's last name and initials~~  
25 shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal  
26 or plastic tags to the buoy. ~~The~~ If a vessel is used, the identification shall also include owner's last  
27 name and initials and if a vessel is used, one of the following:

28 (A) ~~Gear-gear~~ owner's current motor boat registration number; or

29 (B) ~~Owner's-gear~~ owner's U.S. vessel documentation name.

30 (2) ~~Set-set~~ a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational  
31 permitted shrimp pound net set.

32 (e) Escape Panels:

33 (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may  
34 impose any ~~or all~~ of the following requirements ~~or restrictions~~ on the use of escape panels:

35 (A) ~~Specify specify~~ size, number, and ~~location-location;~~

36 (B) ~~Specify specify~~ mesh length, but not more than six ~~inches-inches;~~

37 (C) ~~Specify specify~~ time or ~~season-season;~~ and

1 (D) ~~Specify~~ specify areas.

2 (2) It ~~is~~ shall be unlawful to use flounder pound net sets without four unobstructed escape panels in  
3 each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the  
4 side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of  
5 five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight  
6 meshes long.

7 (f) ~~During 1 December through 1 February the~~ The Fisheries Director shall by proclamation establish time periods  
8 between December 1 through February 1 and areas where it ~~is~~ shall be unlawful to fail to remove all nets from pound  
9 net sets in commercial fishing operations in internal coastal waters.

10 (g) It ~~is~~ shall be unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and  
11 associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the  
12 costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

13  
14 *History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;*

15 *Eff. April 1, 2009;*

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

1 15A NCAC 03J .0502 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING**

4 (a) All initial, ~~renewal~~ renewal, or transfer applications for Pound Net Set Permits, and the operation of such pound  
5 net sets, shall comply with the ~~rules~~ requirements governing all permits as provided in 15A NCAC 03O .0502. The  
6 procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

7 (b) Applicants for Pound Net Set permits shall meet the following eligibility requirements as determined by the  
8 Fisheries Director:

- 9 (1) ~~Applicant~~ the applicant is an individual and not a corporation, partnership, organization or other  
10 entity;
- 11 (2) ~~Applicant~~ the applicant has in the past complied with fisheries rules and laws and does not have any  
12 licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries  
13 violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.
- 14 (3) ~~Applicant~~ the applicant has in the past complied with all permit conditions, ~~rules~~ rules, and laws  
15 related to pound nets.
- 16 (4) ~~Applicant~~ the applicant holds proper valid ~~license(s) and permit(s)~~ licenses and permits necessary  
17 to fish the type of net indicated in the application.

18 (c) Applications for Pound Net Set permits shall include the following:

- 19 (1) ~~A~~ a base map provided by the Division of Marine Fisheries indicating the proposed set location  
20 including an inset vicinity map showing the location of the proposed set with detail sufficient to  
21 permit on-site identification and location.
- 22 (2) ~~Declaration~~ declaration of the type of pound net that will be deployed at the site. One of the  
23 following pound net fisheries shall be specified:
- 24 (A) ~~Flounder~~ flounder pound net set;
- 25 (B) ~~Bait~~ bait pound net set;
- 26 (C) ~~Shrimp~~ shrimp pound net set;
- 27 (D) ~~Blue~~ blue crab pound net set; or
- 28 (E) ~~Other~~ other finfish pound net set.

29 (d) For proposed new ~~location(s)~~ locations, the Fisheries Director shall issue a public notice of intent to consider  
30 issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold  
31 public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the  
32 application within 90 days of receipt of a complete and verified application, the application ~~is~~ shall be deemed denied.  
33 The applicant shall be notified of denial in writing. Approval ~~is~~ shall be conditional based upon the applicant's  
34 continuing compliance with eligibility requirements set out in Paragraph (e) of this Rule and specific conditions  
35 contained on the Pound Net Set Permit. The applicant may contest final decision to approve or deny the denial of a  
36 Pound Net Set Permit application ~~may be appealed by the applicant~~ by filing a petition for a contested case ~~hearing~~,

1 ~~in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of~~  
2 ~~Administrative Hearings under G.S. 150B-23.~~

3 (e) In order for a site to be deemed suitable for a pound net set, the proposed set location shall meet the following  
4 criteria as determined by the Fisheries Director:

- 5 (1) ~~The the~~ proposed pound net set, either alone or when considered cumulatively with other existing  
6 pound net sets in the area, will not interfere with ~~public~~ navigation or with existing, traditional uses  
7 of the area other than navigation, and will not violate 15A NCAC 03J .0101 and .0102;
- 8 (2) ~~The the~~ proposed pound net set will not interfere with the rights of any riparian or littoral landowner,  
9 including the construction or use of piers;
- 10 (3) ~~The the~~ proposed pound net set will not, by its proximate location, interfere with existing pound net  
11 sets in the area. Flounder or other finfish pound net sets will be a minimum of 1,000 yards, as  
12 measured in a perpendicular direction, from any point on a line following the permitted location of  
13 existing pound net sets; except
- 14 (A) in Chowan River as referenced in 15A NCAC 03J .0203; and  
15 (B) for renewal of pound net sets permitted prior to January 1, 2003;
- 16 (4) ~~The the~~ proposed shrimp or blue crab pound net set will be a minimum of 300 yards, as measured  
17 in a perpendicular direction, from any point on a line following the permitted location of existing  
18 pound net sets;
- 19 (5) ~~The the~~ proposed pound net set is not located in Core Sound in areas designated in 15A NCAC 03R  
20 .0113 except that only those Pound Net Set ~~Permits~~ permits valid within the specified area as of  
21 March 1, 1994, may be renewed or transferred subject to the requirements of this Rule; and
- 22 (6) ~~Issuance~~ issuance of the proposed Pound Net Set Permit is in compliance with management  
23 measures adopted in fishery management plans.

24  
25 *History Note:* Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
26 Eff. April 1, 2009;  
27 Readopted Eff. May 1, 2022.

1 15A NCAC 03J .0503 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL**

4 An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of  
5 expiration of the existing ~~permit,~~ permit and shall not be processed unless filed by the permittee. The Fisheries Director  
6 shall review the renewal application under the criteria for issuance of a new Pound Net Set ~~Permit,~~ Permit, as set forth  
7 in the rules of this Section. The Fisheries Director may hold public meetings and may conduct such investigations  
8 necessary to determine if the permit should be renewed.

9

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

11 *Eff. April 1, 2009;*

12 *Readopted Eff. May 1, 2022.*



1 15A NCAC 03J .0504 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER**

4 It ~~is shall be~~ unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted  
5 to the Division of Marine Fisheries not less than 45 days before the date of the transfer. The application shall be made  
6 by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an  
7 application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting  
8 and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit  
9 expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the  
10 Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's  
11 qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor  
12 shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters  
13 ~~testamentary~~ testamentary, and a list of eligible immediate family members as defined in G.S. 113-168 to the  
14 Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor  
15 may transfer the ~~permit(s)~~ permit or permits to eligible immediate family members of the deceased permittee. No  
16 transfer is effective until approved and processed by the Division.

17

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

19 *Eff. April 1, 2009;*

20 *Readopted Eff. May 1, 2022.*

1 15A NCAC 03J .0505 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS**

4 (a) It ~~is~~ shall be unlawful for a ~~permittee~~ permittee to:

5 (1) ~~To~~ fail to notify the Division of Marine Fisheries ~~Marine Patrol~~ Communications Center by phone  
6 at 800-682-2632 or 252-726-7021 within 72 hours ~~by phone~~ of:

7 (A) ~~Of~~ an operational pound net set. Notification shall include the name of permittee, type of  
8 net, Pound Net Set Permit number, county where located, a specific location site, and how  
9 many pounds are in the set; and

10 (B) ~~Of~~ a change to the type of net being set at the permitted site.

11 (2) ~~To~~ make false notifications.

12 (3) ~~To~~ fail to render the pound net set inoperable during any closed season for the type of fishery for  
13 which the pound net is permitted.

14 Failure to comply with this Paragraph ~~is~~ shall be grounds for the Fisheries Director to revoke any Pound Net Set  
15 Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.

16 (b) Pound net sets ~~are~~ shall be subject to inspection at all times.

17 (c) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.

18 (d) It ~~is~~ shall be unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of  
19 the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.

20

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

22 *Eff. April 1, 2009;*

23 *Readopted Eff. May 1, 2022.*

1 15A NCAC 03O .0111 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03O .0111 SURRENDER OF LICENSES**

4 (a) It ~~is~~ shall be unlawful for any licensee to refuse to surrender to an agent of the Secretary all licenses, license  
5 receipts, endorsements, commercial fishing vessel registration or decals, and other forms and records relating to the  
6 license following service of notice of suspension or revocation of licenses in accordance with G.S. ~~413-171~~, 113-171  
7 and Rule .0114 of this Section.

8 (b) It ~~is~~ shall be unlawful for any person in custody or possession of any licenses, license receipt, endorsements,  
9 commercial fishing vessel registration or decals, and other documentation required to be surrendered to refuse to  
10 surrender same to an agent of the Secretary making such demand.

11 (c) A license issued by the Division in error shall be required to be surrendered immediately upon service of a notice  
12 by an agent of the Fisheries Director to surrender the license.

13

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

15 *Temporary Adoption Eff. July 1, 1999;*

16 *Eff. August 1, 2000;*

17 *Amended Eff. October 1, 2012;*

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

1 15A NCAC 03O .0114 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES**

4 (a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113  
5 shall be subject to suspension and revocation.

6 (b) A conviction resulting from being charged by an inspector under G.S. 14-32, 14-33, 14-72, or 14-399 shall be  
7 deemed a conviction for the purposes of license suspension or revocation.

8 (c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in  
9 Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, second, third, fourth, or  
10 subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall  
11 be treated as a single conviction for the purposes of license suspension or revocation. For a second conviction, the  
12 Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the  
13 Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent  
14 conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

15 (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued  
16 to the licensee for a period of one year;

17 (2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses  
18 issued to the licensee for a period of one year; for a second or subsequent conviction under G.S.  
19 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;

20 (3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director  
21 shall revoke all licenses issued to the licensee; and

22 (4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries  
23 inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former  
24 licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional  
25 license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two  
26 years.

27 (d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a  
28 licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation.  
29 If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with  
30 the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or  
31 other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect  
32 immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and  
33 plates and other forms or records relating to the license as directed by the Fisheries Director. Upon service of a notice  
34 of suspension or revocation of a license, it shall be unlawful to fail to surrender any license so suspended or revoked.

35 (e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for  
36 any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension

1 period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a  
2 period of suspension.

3 (f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked  
4 license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a  
5 period of one year, except as provided in Subparagraph (c)(4) of this Rule. For a request for reinstatement following  
6 revocation, the former licensee shall demonstrate in the request that the licensee will conduct the operations for which  
7 the license is sought in ~~accord~~accordance with all applicable laws and rules, shall submit the request in writing, and  
8 shall ~~send-mail~~ the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box  
9 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries  
10 Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of  
11 the law.

12 (g) ~~A licensee shall not willfully~~ It shall be unlawful to evade the service prescribed in this Rule.

13  
14 *History Note: Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145;*  
15 *Eff. October 1, 2012;*  
16 *Amended Eff. May 1, 2017;*  
17 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0502 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 03O .0502 PERMIT CONDITIONS; GENERAL PERMIT CONDITIONS**

4 (a) It shall be unlawful to violate any permit condition.

5 (b) The following conditions shall apply to all permits issued by the Fisheries Director:

6 (1) ~~it is unlawful to~~ it shall be unlawful to:

7 (A) operate under the permit except in areas, at times, and under conditions specified on the  
8 ~~permit; permit.~~

9 (2)(B) ~~it is unlawful to~~ operate under a permit without having the permit or copy thereof in  
10 possession of the permittee or ~~his or her~~ the permittee's designees at all times of operation  
11 and the permit or copy thereof shall be ready at hand for inspection, except for a Pound  
12 ~~Net Permits; Set Permit.~~

13 (3)(C) ~~it is unlawful to~~ operate under a permit without having a current valid picture identification  
14 in possession and ready at hand for ~~inspection; inspection.~~

15 (4)(D) ~~it is unlawful to~~ refuse to allow inspection and sampling of a permitted activity by an agent  
16 of the ~~Division; Division of Marine Fisheries.~~

17 (5)(E) ~~it is unlawful to~~ fail to provide complete and accurate information requested by the  
18 Division in connection with the permitted ~~activity; activity.~~

19 (F) provide false information in the application for initial issuance, renewal, or transfer of a  
20 permit.

21 (6)(G) ~~it is unlawful to~~ hold a permit issued by the Fisheries Director ~~when~~ if not eligible to hold  
22 any license required as a condition for that permit as stated in ~~15A NCAC 03O .0501; Rule~~  
23 .0501 of this Section.

24 (7)(H) ~~it is unlawful to~~ fail to provide reports within the timeframe required by the specific permit  
25 ~~conditions; conditions.~~

26 (8)(I) ~~it is unlawful to~~ fail to keep such records and accounts as required by the rules in this  
27 Chapter for determination of conservation policy, equitable and efficient administration  
28 and enforcement, or promotion of commercial or recreational ~~fisheries; fisheries.~~

29 (9)(J) ~~it is unlawful to~~ assign or transfer permits issued by the Fisheries Director, except for a  
30 Pound Net ~~Permits Set Permit~~ as authorized by 15A NCAC 03J .0504; .0504.

31 (10)(2) the Fisheries ~~Director; Director~~ or ~~his agent; the Fisheries Director's agent~~ may, by conditions of the  
32 permit, ~~specify~~ impose any ~~or all~~ of the following restrictions for the permitted purposes:

33 (a) species;

34 (b) quantity or size;

35 (c) time period;

36 (e) location;

37 (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.

*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).*

1 15A NCAC 03O .0504 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 03O .0504 ~~SUSPENSION/REVOCATION~~ SUSPENSION AND REVOCATION OF PERMITS**

4 (a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113,  
5 and rules of the Marine Fisheries Commission shall be subject to suspension and revocation. For the purpose of this  
6 Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance".

7 (b) If a license is required to hold a permit:

8 (1) all permits shall be suspended or revoked if the permittee's license privilege has been suspended or  
9 revoked as set forth in G.S. 113-171 and Rule .0114 of this Subchapter. The duration of the permit  
10 suspension or revocation shall be the same as the license suspension or revocation.

11 (2) in the event a person makes application for a new permit during any period of license or permit  
12 suspension, no new permit shall be issued during the suspension period.

13 (3) in the case of revocation of license privileges, the former licensee shall not be eligible to apply for  
14 reinstatement of a revoked permit.

15 (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  
16 eligible to apply for reinstatement of a revoked permit for a period of six months.

17 ~~(a)~~(d) It shall be unlawful to violate any permit condition. For violation of ~~specific~~ permit conditions (as specified on  
18 the permit), permits may be suspended or revoked according to the following schedule:

19 (1) violation of one ~~specific permit~~ condition in a ~~three year~~ three-year period, permit shall be suspended  
20 for 10 ~~days;~~ days.

21 (2) violation of two ~~specific permit~~ conditions in a ~~three year~~ three-year period, permits shall be  
22 suspended for 30 ~~days;~~ days.

23 (3) violation of three ~~specific permit~~ conditions in a ~~three year~~ three-year period, permits shall be  
24 revoked for a period not less than six months.

25 (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked  
26 and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

27 If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be  
28 treated as a single violation for the purpose of suspension or revocation. ~~If the permit condition violated is the refusal~~  
29 ~~to provide information upon request by Division staff, either by telephone, in writing or in person, the Fisheries~~  
30 ~~Director may suspend the permit. Such permit may be reinstated 10 days after the requested information is provided.~~

31 ~~(b) All permits will be suspended or revoked when the permittee's license privilege has been suspended or revoked~~  
32 ~~as set out in G.S. 113-171. The duration of the suspension or revocation shall be the same as the license suspension~~  
33 ~~or revocation. In the event the person makes application for a new permit during any period of license suspension, no~~  
34 ~~new permit will be issued during the suspension period. In case of revocation of license privileges, the minimum~~  
35 ~~waiting period before application for a new permit to be considered will be six months.~~

36 ~~(e)~~(e) Permit designees shall not be permitted to participate in a permit operation during any period they are under  
37 license suspension or revocation.



1 (f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause  
2 the permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is  
3 not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation,  
4 partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an  
5 inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

6 (g) The Fisheries Director shall order summary suspension of a permit if it finds that the public health, safety, or  
7 welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the  
8 reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of  
9 service of a certified copy of the order at the last known address of the permittee, whichever is later.

10 ~~(d)~~(h) Upon service of a notice of suspension or revocation of a permit, it is shall be unlawful to fail to surrender any  
11 permit so suspended or revoked.

12 (i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a  
13 notice by an agent of the Fisheries Director to surrender the permit.

14 (j) It shall be unlawful to evade the service prescribed in this Rule.

15 (k) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation  
16 Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which  
17 the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture  
18 Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are  
19 described in 15A NCAC 03J .0505.

20  
21 *History Note: Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-*  
22 *145;*

23 *Temporary Adoption Eff. May 1, 2000;*

24 *Eff. April 1, 2001;*

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

1 15A NCAC 03P .0101 is proposed for readoption with substantive changes as follows:

2  
3 **SUBCHAPTER 03P - ~~HEARING~~ ADMINISTRATIVE PROCEDURES**

4  
5 **SECTION .0100 - HEARING PROCEDURES**

6  
7 **15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW**

8 (a) Except in cases where summary suspension is applicable, before the Division of Marine Fisheries may commence  
9 proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice  
10 shall be given to the license holder that the license holder may file a petition for a contested case in accordance with  
11 G.S. 113-171(e) and may request a final agency decision in accordance with G.S. 113-171(f).

12 ~~(a)(b)~~ For the purpose of this Rule and in accordance with G.S. 150B-2, "license"-"permit" includes "permit" as well  
13 as "certification" and "certificate of compliance."

14 ~~(b)(c)~~ Except in cases where G.S. ~~113-171~~ 113-171, 15A NCAC 03O .0114, or summary suspension is applicable,  
15 before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall,  
16 cancellation, or amendment of a ~~license, permit,~~ notice shall be given to the license holder that permittee that the  
17 permittee:

18 (1) may request an opportunity to show compliance with all requirements for retention of the permit by  
19 submitting a statement in writing to the personnel designated in the notice to commence  
20 proceedings; and

21 ~~(1)(2)~~ the license holder has a the right, through filing a request for a contested case hearing in the Office  
22 of Administrative Hearings, to a hearing before an administrative law judge, judge and a final agency  
23 decision by the Marine Fisheries Commission; and

24 (2) the license holder may request an opportunity to show compliance with all requirements for  
25 retention of the license by submitting a statement in writing to the personnel designated in the notice  
26 to commence proceedings.

27 ~~(c)(d)~~ Any statements submitted by the ~~license holder permittee~~ to show compliance with all requirements for  
28 retention of the ~~license permit~~ shall be postmarked or emailed within ~~15-10~~ 15-10 days of receipt of the notice to commence  
29 ~~proceedings. proceedings, except for a permit related to endangered or threatened species or a species managed by a~~  
30 quota, any statements to show compliance shall be postmarked or emailed within five days of receipt of the notice to  
31 commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated  
32 in the notice and ~~mailed if mailed, sent~~ to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769,  
33 Morehead City, NC 28557,28557, or if emailed, sent to the email address provided in the notice for the designated  
34 personnel.

35 ~~(d)(e)~~ Upon receipt of a statement and any supporting documentation from the ~~license holder, permittee,~~ the Division  
36 shall review the statement and, within ~~15-10~~ 15-10 days, shall notify the ~~license holder permittee~~ in writing with the  
37 Division's determination whether the ~~license holder permittee~~ demonstrated compliance with all requirements for

1 retention of the ~~license-permit~~. In making this determination, the Division may consider criteria including material  
2 changes made enabling the ~~license holder-permittee~~ to conduct the operations for which the ~~license-permit~~ is held in  
3 ~~accord-accordance~~ with all applicable laws and ~~rules-rules~~, and processing errors made by the Division.

4 ~~(e) The Division shall order summary suspension of a license if it finds that the public health, safety, or welfare~~  
5 ~~requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for~~  
6 ~~the emergency action. The effective date of the order shall be the date specified on the order or the date of service of~~  
7 ~~a certified copy of the order at the last known address of the license holder, whichever is later.~~

8  
9 *History Note: Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23;*  
10 *Eff. January 1, 1991;*  
11 *Amended Eff. May 1, 2017; August 1, 1999;*  
12 *Readopted Eff. May 1, 2022.*