

**Fiscal Impact Analysis of Proposed Amendment and Readoption or Repeal of 15A NCAC  
03K and 18A Crustacea and Shellfish Rules  
Pursuant to G.S. 150B-21.3A**

**Rule Amendments:** 15A NCAC 03K .0103, .0104, .0107, .0109, .0208, .0209, 18A .0135, .0302, .0425 (amendment and readoption)  
15A NCAC 18A .0303, .0304, .0912 (repeal through readoption)

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

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**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. 113-168.5.	License endorsements for Standard Commercial Fishing License.
G.S. 113-169.2.	Shellfish license for North Carolina residents without a SCFL.
G.S. 113-182.	Regulation of fishing and fisheries.
G.S. 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
G.S. 113-203.	Transplanting of oysters and clams.
G.S. 113-204.	Propagation of shellfish.
G.S. 113-221.1.	Proclamations; emergency review.
G.S. 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
G.S. 143B-289.52.	Marine Fisheries Commission - powers and duties.
G.S. 150B-21.3A.	Periodic review and expiration of existing rules.

**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. The proposed amendments readopt nine rules and repeal through readoption three

rules in 15A NCAC 03K and 18A pursuant to this requirement. These rules all relate to crustacea and shellfish, management areas for them, and the sanitary handling of them.

## **II. Summary**

These 12 rules relating to crustacea and shellfish set specific requirements for shellfish management areas (15A NCAC 03K .0103, .0104, .0208, .0209, 18A .0303, .0912), depuration of shellfish (15A NCAC 03K .0107, 18A .0304), crustacea and shellfish permits (15A NCAC 18A .0135, .0302), and shellfish tagging (15A NCAC 03K .0109, 18A .0425). Session Law 2011-145 abolished the Division of Environmental Health (DEH) and transferred the Shellfish Sanitation and Recreational Water Quality Section to the Division of Marine Fisheries (DMF) under a Type I transfer. Prior to this change, the DEH advised the DMF on certain matters relating to public health of crustacea and shellfish and the DEH rules bore this out by one division advising the other. Now that the authority for these rules all fall under the Marine Fisheries Commission (MFC), the agency is proposing amendments to rules that have overlapping content, including the repeal through readoption of 15A NCAC 18A .0303, .0304, and .0912. In addition, amendments are proposed to increase efficiency for the DMF, which will provide a small but unquantifiable benefit to the State and some stakeholders and could result in potential indirect impacts for other stakeholders. No new costs to enforcement are estimated from these proposed rule amendments. These rules have been reviewed to conform to the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. As a result, the proposed readoptions also consist of amendments that conform the rules to current standards.

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

Session Law 2011-145 abolished the DEH and transferred the Shellfish Sanitation and Recreational Water Quality section to the DMF under a Type I transfer. As a result, G.S. 130A-230 was repealed and the authority for rulemaking for the sanitation requirements for harvesting, processing and handling of scallops, shellfish, and crustacea was transferred to the MFC, which is now contained in G.S. 113-221.2 and G.S. 113-221.4.

The purpose of the MFC is to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and recreational fisheries resources (Chapter 143B, Article 7, Part 5D). For the protection of public health, the MFC is also required to adopt rules establishing sanitation requirements for the harvesting, processing, and handling of scallops, shellfish, and crustacea of in-state origin. The rules of the MFC may also regulate scallops, shellfish, and crustacea shipped into North Carolina (G.S. 113-221.2).

The agency is proposing 12 rules for readoption or repeal through readoption pursuant to G.S. 150B-21.3A. In so doing, amendments are proposed to simplify requirements where there is overlapping content resulting from the Type I transfer. The most apparent occurrences of this are the proposed repeal of 15A NCAC 18A .0304, Depuration Harvesting Permits, which is redundant with 15A NCAC 03K .0107, Depuration of Clams and Oysters, and the proposed repeal of 15A NCAC 18A .0912, Shellfish Management Areas, which is redundant with 15A NCAC 03K .0103 of the same name. Neither of these 18A rules sets any unique requirements not already set in other MFC rules. Similarly, 15A NCAC 18A .0303, Relaying Permits, and 15A

NCAC 03K .0104, Permits for Relaying Shellfish from Polluted Areas, have overlapping content. In this case, the 18A rule sets a few requirements that are proposed to be added to the 03 rule for clarity and efficiency, so repeal of 18A .0303 is contingent on the reoption of 03K .0104. The proposed repeal of 18A .0303, .0304, and .0912 are not expected to have any impacts and so will not be elaborated on further in this analysis.

The remaining nine rules for reoption contain proposed amendments to accomplish two primary goals. Firstly, amendments are proposed to increase efficiency for the DMF for requirements pertaining to crustacea and shellfish, management areas for them, and the sanitary handling of them, which could result in potential indirect impacts for some stakeholders, but will provide a small but unquantifiable benefit to the State and other stakeholders. These efficiencies are expected to be gained by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Secondly, the proposed reoptions consist of amendments that conform the rules to current standards for punctuation, capitalization, word usage, agency name, and other similar technical changes that are not elaborated on further in this analysis.

The proposed amendments to increase efficiency for the DMF for requirements pertaining to crustacea and shellfish can be further segmented into two categories: shellfish management areas generally, and the sanitary handling of crustacea and shellfish. The second category is further organized by requirements for depuration of shellfish, crustacea and shellfish permits, and shellfish tagging.

#### Shellfish Management Areas

Requirements for shellfish management areas (generally) are set in 15A NCAC 03K .0103, Shellfish Management Areas, 03K .0208, Seed Oyster Management Areas, and 03K .0209, Oyster Sanctuaries. Requirements are also set in 15A NCAC 03K .0104, Permits for Relaying Shellfish from Polluted Areas. This analysis examines these two sub-categories separately.

#### *Shellfish Management Areas, Seed Oyster Management Areas, and Oyster Sanctuaries*

Rules 15A NCAC 03K .0103, .0208, and .0209 are proposed for reoption with amendments primarily intended to clarify and conform rule language to existing practices. Each of the three rules describes a different management tool, and therefore proposed amendments include definitions for each tool within the corresponding rule. The purpose is to assist stakeholders and DMF resource managers in differentiating between management tools and understanding the intended management strategies for each. The net effect of these rule amendments is negligible because the intent of the rules has not changed, it is only made more clear and consistent.

Beyond these clarifying changes, proposed amendments delegate proclamation authority to the DMF Director related to delineations of these areas. In 03K .0103 and .0209, the DMF Director may designate or modify boundaries of Shellfish Management Areas (SMAs) and Oyster Sanctuaries, respectively, to address variable conditions of biological impacts or variable spatial distribution, such as shifting reef materials. Seed Oyster Management Areas (SOMAs) boundaries are delineated in MFC rule (15A NCAC 03R .0116), however proposed amendments to 03K .0208 delegate proclamation authority for the DMF Director to modify or close those designated areas for the protection of public health or because the areas are no longer productive.

There are current SOMAs that are no longer in open harvest waters and therefore, cannot be used as a SOMA. Further, there are other current SOMAs that are no longer in productive areas for growing shellfish and therefore, are not being used as SOMAs. Proposed changes are not expected to have impacts to the State or stakeholders beyond benefits from clarifying the current status of a particular SOMA.

Additional proposed amendments in 03K .0103 and .0209 remove marking requirements for SMAs and Oyster Sanctuaries, respectively. In 03K .0103, boundary marking may not be appropriate unilaterally, depending on the size of the area and the management measures within the boundaries, so flexibility is needed. As a result, proposed amendments provide a mechanism for the DMF Director to specify marking requirements in proclamation in conjunction with other management requirements. In 03K .0209, marking requirements are not required in rule for two reasons: 1) marking for navigation is already prescribed by the U.S. Coast Guard and 2) 15A NCAC 03I .0121, Maps and Marking, states boundary descriptions in Chapter 03 and in proclamations prevail over markers and signs. Therefore, the absence of markers and signs does not affect the applicability of rules or proclamations so long as the boundary descriptions are described. Removing the marking requirements from 03K .0103 and .0209 also removes unnecessary burden on DMF staff, who are responsible for marking, which will provide a small but unquantifiable benefit to the State.

Lastly, additional proposed amendments in 03K .0103 standardize the DMF Director's proclamation authority and broaden it to impose requirements for season, size, quantity, and marking, consistent with other similar rules. The use of this authority is expected to benefit the resources overall by protecting value-added shellfish enhancement projects, often undertaken by nongovernmental organizations, while they are being developed. These designations are usually temporary in nature based on the timespan of a project. No direct impacts are expected to fishermen as existing habitat areas would not be restricted under this rule. Proclamation authority is also proposed in 03K .0209 for the DMF Director to restrict the use of fishing gears on oyster sanctuaries, based on variable conditions of biological impacts or user conflicts. Authority provided to the director in this rule is intended as a proactive measure to address issues such as derelict gears, protected species interactions, or over-exploitation of resources, should they arise. This additional authority is not intended to address any ongoing management concerns; however, its use could have potential indirect impacts to stakeholders in the future if restrictions need to be implemented. The impacts could include loss of catch efficiency on oyster sanctuaries for recreational fishermen, but the corresponding benefits could relate to increased productivity of the oyster reefs themselves, protection of endangered or threatened species, and health of the resources overall. Restrictions within the boundaries of SOMAs are prescribed within the existing rule and are not proposed for amendment.

#### *Permits for Relaying Shellfish from Polluted Areas*

The second sub-category of proposed amendments to rules for shellfish management areas, generally, pertain to polluted areas and permits for relaying shellfish from them, as set forth in 15A NCAC 03K .0104. Relaying is when shellstock (clams, oysters live in the shell) is transferred from a body of water in the "Restricted" or "Conditionally Approved (closed)" classifications to a body of water classified as "Approved" or "Conditionally Approved (open)" for the purpose of reducing potential pathogens or deleterious substances that may be present in

the shellstock (see 15A NCAC 18A .0900). The ambient environment is used as the treatment process and a relay permit is required from the DMF prior to relay activity.

Proposed amendments to this rule delete "prohibited (polluted)" and replace it with "polluted". The use of "prohibited" in the current rule is problematic in that it is meant to define an area that is eligible as a relay area, but the Shellfish Sanitation Program and 15A NCAC 18A rules use "Prohibited" as a specific shellfish harvest classification from areas where no relay can occur. The National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (Model Ordinance or MO), which is a minimum set of guidelines that all state shellfish control authorities must meet, also uses "Prohibited" as a classification where relay is not eligible, so for this rule amendment, the use of "prohibited" is proposed to be changed to "polluted" for clarity. Effectively, this does not change anything for the DMF or the public as the practice of relay was already limited only to areas classified as "restricted" or "conditionally approved" and not "prohibited" consistent with the NSSP MO. (The term "polluted" is proposed to be defined in the readoption of 15A NCAC 03I .0101 covered in a separate analysis.) It should be noted that 03K .0103 and .0107 (described above and below, respectively) also have occurrences of "prohibited (polluted)" and are proposed for amendment as well.

Existing Paragraph (c) is proposed to be deleted as there have been no instances where shellfish product that was set to be destroyed via maintenance dredging has been moved to a shellfish lease as part of a relay. Typically, these maintenance dredge areas are closed to shellfish harvest and are not eligible for human consumption. Common practice for shellfish product that would otherwise be destroyed via maintenance dredging is to be moved to another area that is also closed to the harvest of shellfish. The deletion of this rule component is not expected to have any effect on DMF staff or stakeholders.

The proposed new requirement in Paragraph (e) states that leases and franchises used for relayed shellfish shall remain closed until a proclamation reopens the leases, and that this reopening shall not be any sooner than 21 days after the end of the relay season. Contaminant reduction studies performed by the DMF have shown that 21 days is necessary to reduce potential pathogens to acceptable levels. The use of contaminant reduction studies to determine a minimum purge time is a requirement of the NSSP MO for shellfish producing states. This addition has already been common practice for many years and has been a condition of the relaying permits so effectively there is no effective change and the amendment is simply transferring the requirement from the permit conditions to rule.

### Sanitary Handling of Crustacea and Shellfish

The second category of proposed amendments to increase efficiency for the DMF for requirements pertaining to crustacea and shellfish, specifically the sanitary handling of crustacea and shellfish, is further organized by requirements for depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. This analysis examines each of these sub-categories separately.

#### *Depuration of Shellfish*

Rule 15A NCAC 03K .0107 contains requirements for depuration of clams and oysters. Depuration is the process of reducing potential pathogens that may be present in shellfish taken

from certain polluted areas using a controlled aquatic environment as the treatment process. Depuration facilities are strictly regulated in order to ensure that the final shellfish product is safe for human consumption. As such, the requirements are significant and include validation of disinfection procedures, as well as routine bacteriological end-testing of product in an FDA certified and inspected lab for that method. The operation of these facilities is expensive and they are only in operation in the United States in New Jersey and Massachusetts. North Carolina does not have any depuration facilities and has not ever had any in part due to the cost and complexity of permitting, and the availability of shellfish from non-polluted areas.

The amendments proposed in this rule are primarily non-substantive conforming changes related to the DEH being abolished and the Shellfish Sanitation Program being moved to the DMF in 2011 per Session Law 2011-145. An amendment in Paragraph (a) clarifies that clams or oysters for depuration can only be taken from public polluted waters or shellfish franchises in polluted waters, and not from shellfish leases in polluted waters since shellfish leases are not permitted in areas closed to the harvest of shellfish such as polluted waters. Also, the last sentence of Paragraph (a) is proposed to be deleted as it is not necessary; the definition of "depuration" in 15A NCAC 03I .0101 (covered in a separate analysis) is proposed for amendment to exclude the relay of clams or oysters.

The proposed amendments to this rule are not expected to have any impacts or create an additional burden to DMF staff as there are no substantive changes to current practice. Also, there are no depuration facilities permitted in North Carolina with none expected in the future, although, consistent with the NSSP MO requirements, the State has the current requirements in place should the need ever arise.

#### *Crustacea and Shellfish Permits*

The next sub-category for the sanitary handling of crustacea and shellfish is crustacea and shellfish permits (15A NCAC 18A .0135, .0302). Proposed amendments to 18A .0135 seek to ensure there is adequate enforcement authority related to the permitting of crustacea processors. In order to protect the public health, crustacea processors are required to get a Crustacea Permit and Certificate of Compliance from the DMF and operate according to related MFC rules. Typically, crustacea processors cook raw crabs and pick the meat into containers, which are then sold and the meat is consumed by the public. It is important that this process be conducted under permit in a sanitary manner according to the crustacea rules in 18A .0100 to prevent illness.

The proposed amendment in Paragraph (a) of this rule would make it unlawful to operate a crustacea processing facility without first obtaining the required Crustacea Dealer Permit and Certificate of Compliance. The proposed amendment in Paragraph (i) links to the current procedures and requirements for suspension or revocation of the Crustacea Dealer Permit and Certificate of Compliance now that the Shellfish Sanitation and Recreational Water Quality section is covered under the authority of MFC rules. As it stands currently, there is no official recourse if someone operates a crustacea processing facility without having the permit and certificate of compliance, beyond embargo of the product under G.S. 113-221.4 and 15A NCAC 18A .0181.

Under the proposed amendments, additional legal pathways are created consistent with the DMF's notice of violation processes for suspension or revocation of permits that provides middle ground between 100% compliance and embargo of product. One of these pathways is the opportunity for the permit holder to demonstrate compliance before the suspension process proceeds, adding flexibility for stakeholders and the State that incurs opportunity cost savings and ultimately enhancing the protection of public health available under the MFC rules. The proposed amendments strengthen the ability of Marine Fisheries Inspectors to enforce permit requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved. In the rare instances where someone was operating a facility without the required permit, the proposed amendments would allow Marine Fisheries Inspectors to issue a violation that could lead to a conviction, serving as a deterrent to non-compliance in the future and providing an additional management tool to the State. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity costs.

Proposed amendments to 18A .0302 seek to ensure the rules related to shellfish facilities and processing meet the minimum requirements of the NSSP regarding enforcement, as well as ensuring those rules are consistent with other permit rules under the authority of the MFC. North Carolina is part of the NSSP, which is a federal/state cooperative program designed to promote and improve the sanitation of shellfish (oysters, clams, mussels, and scallops) moving in interstate commerce. DMF staff work together with representatives from other states, the federal government, and industry through the Interstate Shellfish Sanitation Conference to develop guidelines for all state shellfish programs that are summarized in the NSSP MO. North Carolina must meet the minimum standards included in the NSSP MO in order for North Carolina shellfish to be able to be sold through interstate commerce.

The NSSP requires that state shellfish authorities have sufficient administrative procedures to enforce and regulate shellfish activities, including enforcement of non-permitted activity, as well as suspension or revocation of permits when necessary. Prior to Session Law 2011-145, the authorizing statute (G.S. 130A-23) for suspension or revocation of permits for violation of rules gave explicit authority to do so. The current authorizing statute (G.S. 113-221.2) provides authority to issue and revoke permits according to MFC rules.

The proposed amendments in Paragraphs (a), (b), and (c) would make it unlawful to engage in the listed activities without first obtaining the required Shellfish Dealer Permit and Certificate of Compliance. The proposed amendment in Paragraph (j) links to the current procedures and requirements for suspension or revocation of the Shellfish Dealer Permit and Certificate of Compliance, now that the Shellfish Sanitation and Recreational Water Quality section is covered under the authority of MFC rules. These two changes would more explicitly link suspension or revocation of a permit for a violation of MFC rules, enhancing the administrative procedures required to be in place under the NSSP. As it stands currently, there is no official recourse if someone operates a shellfish facility without having the permit and certificate of compliance, beyond embargo of the product under G.S. 113-221.4 and 15A NCAC 18A .0429.

There have been rare instances where someone obtained a DMF Fish Dealer License and acted as a shellfish dealer without first obtaining the required Shellfish Dealer Permit and Certificate of

Compliance in accordance with 15A NCAC 03O .0101. Under the proposed amendments, additional legal pathways are created consistent with the DMF's notice of violation processes for suspension or revocation of permits that provides middle ground between 100% compliance and embargo of product. One of these pathways is the opportunity for the permit holder to demonstrate compliance before the suspension process proceeds, adding flexibility for stakeholders and the State that incurs opportunity cost savings and ultimately enhancing the protection of public health available under the MFC rules. The proposed amendments strengthen the ability of Marine Fisheries Inspectors to enforce permit requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity costs.

### *Shellfish Tagging*

The final sub-category for the sanitary handling of crustacea and shellfish is shellfish tagging. The majority of the proposed amendments will increase clarity and efficiency by moving current requirements that have been implemented via proclamation and consolidating them into rule.

Proposed amendments to 15A NCAC 03K .0109, Shellfish Harvest Tags, seek to ensure that the tagging of shellfish after harvest meets the minimum requirements of the NSSP, as well as clearly differentiates the requirements for harvest tags versus shellfish dealer tags, which are covered in 15A NCAC 18A .0425. North Carolina is part of the NSSP, which requires that state shellfish authorities including North Carolina regulate the harvest of shellfish such that harvest tags are used on shellstock after harvest so that the source of the shellfish can be determined in the case of an illness related to consumption of those shellfish (traceback). Proposed amendments in the lead-in of the rule and Item (2) seek to clarify when a harvest tag is required on shellfish versus when a shellfish dealer tag is required. Effectively, the requirements and enforcement have not changed from the current rule in this regard and the proposed amendments are simply clarifying in nature.

Several requirements are proposed to be added to rule that are requirements of the NSSP MO that have been enforced to this point through proclamation authority (see [SS-1-2021](#) and [SS-2-2021](#) as current examples). A new requirement in the lead-in of the rule and in Sub-Item (4)(f) is the requirement for shellfish dealers to keep harvest tags in "chronological order" after the harvest tags are replaced with shellfish dealer tags. Dealers and retailers are already expected to keep harvest tags from depleted shellfish containers on file in chronological order so the proposed amendments are conforming the rule to current practice.

The requirements for the use of a "bulk" harvest tag are now detailed in Item (3). Additional language is required on the tag by the NSSP MO, such as the number of containers. Other additions to required information that must be included on harvest tags include the letters "NC" and the designated growing area where the product was harvested, as well as the shellfish lease or franchise number if applicable (sub-items (4)(c) and (4)(d)). These are intended to further narrow down the source of harvested shellfish in the case of an illness. Finally, the "time of the start of harvest" must also be included on the harvest tag, in Sub-Item (g). These items have also been enforced to this point through proclamation authority and so are conforming the rule to current practice. Current enforcement will not change under these rule amendments.



Overall, the proposed amendments to this rule are not expected to have an effect on current practices in North Carolina regarding harvest tags. The changes have already been incorporated into harvest tags via proclamation. These proposed amendments will increase clarity and efficiency by requirements being consolidated into rule.

Proposed amendments to 15A NCAC 18A .0425 seek to ensure that the tagging of shellfish by shellfish dealers, retailers, and restaurants (after initially being tagged by a certified shellfish dealer) meets the minimum requirements of the NSSP MO and also clearly differentiates the requirements for harvest tags versus shellfish dealer tags. The NSSP requires that state shellfish authorities including North Carolina regulate the tagging of shellstock such that dealer tags are used (after initial tagging by the first receiving shellfish dealer) so that the source of the shellfish can be determined in the case of an illness related to consumption of those shellfish. One requirement of the NSSP MO is that the shellfish control authority have sufficient administrative procedures to enforce requirements such as dealer tags.

One proposed amendment in Paragraph (a) of this rule would clarify that it is unlawful for certified shellfish dealers and retailers to possess shellstock (after the shellstock has been processed or shipped by the initial shellfish dealer) without the required dealer tag and the required information in sub-items (a)(1) through (a)(9). As the rule currently provides, there is little recourse (other than embargo authority) if shellstock does not have the required dealer tag other than the current requirements under 03K .0109. The proposed amendments strengthen the ability of Marine Fisheries Inspectors to enforce requirements if dealer tags are not being included on shellstock by making more distinct the requirements for harvest tags and dealer tags, although typically voluntary compliance is achieved. This includes the enhanced ability for Marine Fisheries Inspectors to issue a violation that could lead to a conviction, serving as a deterrent to non-compliance in the future and providing an additional management tool to the State beyond embargo of product. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity costs.

Similar to proposed amendments to 18A .0135, additional information is required to be on the dealer tag as required by the NSSP MO. This information includes further details if the shellfish has been depurated or wet stored, in sub-items (a)(3) and (a)(4), and clarifications on the source of the shellfish, in Sub-item (a)(5). These are rare and when encountered are from out of state shellfish product. The items are currently required via proclamation and so conforming the rule to current practice.

Proposed amendments in sub-items (a)(7) and (a)(8) and Paragraph (b) add the requirement for dealer tags to be in "chronological order" and have a prescribed statement and blank space for retailers to record the date when that container of shellfish is depleted. These requirements are also designed to aid with traceback to the source of implicated shellfish in the case of an illness. Again, these are requirements of the NSSP MO that have been enforced up to this point through proclamation authority. Dealers and retailers are already expected to keep harvest tags from depleted shellfish containers on file in chronological order, so the proposed amendments are

conforming the rule to current practice. The statement “Keep Refrigerated” is added in Subparagraph (a)(9) and is also currently required via proclamation.

The proposed amendments to this rule are not expected to have an effect on current practices in North Carolina regarding dealer tags. The changes have already been incorporated into dealer tags via proclamations. These proposed amendments will increase clarity and efficiency by requirements being consolidated into rule and provide additional management flexibility to the State to address rare instances of non-compliance.

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

As part of the readoption process, these rules are proposed with amendments intended to increase clarity and efficiency around requirements for crustacea and shellfish, management areas for them, and the sanitary handling of them. The overall intent of the proposed amendments is to conform rule language with ongoing management practice by the DMF.

Across all of the proposed changes described above, each rule is expected to incur benefits to the State from increased efficiencies by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. The proposed readoptions also consist of amendments that conform the rules to current standards for punctuation, capitalization, word usage, and other similar technical changes, making rules more clear and consistent overall. The majority of these proposed changes incur no additional impacts; proposed changes anticipated to incur impacts are summarized here.

The proposed amendments in 15A NCAC 03K .0103, .0208, and .0209 related to the DMF Director's proclamation authority for delineations of shellfish management areas, marking requirements, and gear restrictions provide flexibility to manage variable conditions including environmental conditions, protection of public health, biological impacts, variable spatial distribution, and user conflicts. The amendments make available additional management tools to address changing conditions in a timely fashion, but overall are proactive in nature by being able to address rare events as they may arise. The proposed amendments are expected to provide a small but unquantifiable benefit to the State in the form of time-cost benefits and improved resource protection. Proposed amendments to 03K .0209 could also include loss of catch efficiency on oyster sanctuaries for recreational fishermen if restrictions need to be implemented in the future.

The proposed amendments in 15A NCAC 18A .0135, .0302, and .0425 would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would strengthen the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved. Under the current rules, some minor violations may not result in embargo of product even when voluntary compliance could not be achieved. It is important that the crustacea and shellfish handling, processing, and transport be conducted in a sanitary manner according to the corresponding rules in 18A in order to prevent illness. Marine Fisheries Inspectors are already patrolling these fisheries, so the additional ability to enforce existing requirements is not expected to incur additional opportunity

costs. Overall, the amendments are expected to provide unquantifiable benefits in the form of flexibility for the State and some stakeholders that incurs opportunity cost savings and ultimately enhances the protection of public health available under the MFC rules.

Clarifying changes are proposed to decrease DMF staff labor and effort by providing greater detail across processes, as well as reducing unnecessary redundancies. Additionally, stakeholders will have a clearer understanding of requirements. This also reduces the time burden to stakeholders for staying current with requirements of fisheries in which they participate. The overall thrust of impact to the State is a flow of non-quantifiable benefits related to increased efficiency and resource protection.

## V. Appendix

### Proposed Rules for Readoption

15A NCAC 03K .0103 is proposed for readoption with substantive changes as follows:

#### 15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

~~(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:~~

- ~~(1) conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;~~
- ~~(2) shellfish populations or shellfish enhancement projects that may:
  - ~~(A) produce commercial quantities of shellfish at 10 bushels or more per acre;~~
  - ~~(B) produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or~~
  - ~~(C) serve as sanctuaries to increase spawning and disease resistance or to prevent predation.~~~~

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(c) It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. Area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~

~~(c)(d) It is shall be unlawful to take shellfish from any Shellfish Management Area which that has been closed and posted, in accordance with Paragraph (b) of this Rule, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed impose any of the following requirements based on biological impacts or user conflicts:~~

- (1) specify time;
- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;

- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

*History Note: Authority G.S. 113-134; 113-182; 113-204; ~~113-221~~; 113.221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0104 is proposed for reoption with substantive changes as follows:

**15A NCAC 03K .0104 PERMITS FOR PLANTING ~~PROHIBITED/POLLUTED~~ RELAYING SHELLFISH FROM POLLUTED AREAS**

(a) It ~~is~~ shall be unlawful to take ~~oysters or clams shellfish~~ from ~~prohibited (polluted) polluted~~ polluted public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. ~~Lease~~ Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.

(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.

~~(b)(d)~~ The season for relaying elams shall be between April 1 and May 15 and the season for relaying oysters shellfish shall be for may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:

- (1) the status of ~~oyster shellfish~~ resources available for harvest from public ~~bottom and bottom~~;
- (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
- (3) market factors affecting sale of ~~oysters shellfish~~ from public ~~bottom which will assist in determining the statewide closure date bottom~~; and
- (4) ~~manpower available~~ availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.

~~(e) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall not apply.~~

~~(d)~~ (e) The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds lease or franchise for which the owner has obtained a permit to relay oysters and clams shellfish from prohibited (polluted) polluted public waters, waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.

*History Note: Authority G.S. 113-134; 113-182; 113-203; ~~113-221~~; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996; September 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. April 1, 2003;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0107 is proposed for readoption with substantive changes as follows:

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

(a) It ~~is~~ shall be unlawful to take clams or oysters from ~~the polluted public or private prohibited (polluted) waters or franchises~~ of the state for the purpose of depuration except when the harvest will utilize shellfish-clams or oysters that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division of Marine Fisheries ~~or the Division of Environmental Health. Fisheries.~~ ~~For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.~~

(b) The Fisheries Director, may, by proclamation, impose any ~~or all~~ of the following restrictions on the harvest of clams or oysters for depuration:

- (1) ~~Specify~~ specify species;
- (2) ~~Specify areas~~ specify areas, except harvest ~~will~~ shall not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) ~~Specify~~ specify harvest days;
- (4) ~~Specify time period;~~ specify time;
- (5) ~~Specify~~ specify quantity ~~or size~~;
- (6) specify quantity;
- ~~(6)~~(7) ~~Specify~~ specify harvest methods; and
- ~~(7)~~(8) ~~Specify~~ specify record keeping requirements.

(c) Depuration permits:

- (1) ~~It is~~ it shall be unlawful for individuals to harvest clams or oysters from ~~prohibited (polluted) polluted~~ waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of Marine Fisheries ~~and Division of Environmental Health~~ setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina ~~Clam or Oyster Dealers~~ clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits ~~must~~ shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
- (2) ~~In~~ in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, ~~location~~ location, and telephone number of the depuration operation where the shellfish will be depurated.
- (3) ~~Clam or Oyster Dealers~~ clam or oyster dealers desiring to obtain ~~prohibited (polluted)~~ clams or oysters from polluted waters for the purpose of depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.

(d) Transport of clams or oysters for depuration:

- (1) ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)-polluted~~ waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~Division.
  - (2) ~~Clams-clams~~ or oysters harvested from ~~prohibited (polluted)-polluted~~ waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~Division.
- (e) It ~~is~~shall be unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.
- (f) ~~The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. October 1, 2008; April 1, 2003;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*



15A NCAC 03K .0109 is proposed for readoption with substantive changes as follows:

**15A NCAC 03K .0109 SHELLFISH HARVESTER ~~HARVEST AND DEALER~~ TAGS**

~~It is~~ Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, ~~clams~~ clams, or mussels. Tags shall be affixed by the harvester ~~or dealer~~ and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90 days. It shall be unlawful for the tag to fail to ~~and shall~~ meet the following criteria:

- (1) ~~Tags~~ harvest tags shall be identified as harvest tags. They shall be durable for at least 90 days, ~~water resistant, waterproof,~~ and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) ~~Tags~~ harvest tags shall be securely fastened to ~~the outside of~~ each container in which shellstock is transported. A ~~harvester or dealer~~ harvest tag shall ~~be remain~~ securely fastened to the outside of each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. ~~location except, bulk shipments of shellfish in one container and from the same source may have one tag with all required information attached.~~ Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required harvest and dealer information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) ~~Tags shall be attached to all shellfish stored at a dealer location.~~ bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) ~~Tags~~ tags shall contain legible information arranged in the specific order as follows:
  - (a) ~~The the~~ harvester's name, address address, and shellfish license or standard or retired standard commercial fishing license Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement number number;
  - (b) ~~The the~~ date of harvest harvest;
  - (c) ~~The the~~ most precise description identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts. Bay), including at a minimum the State's two initials "N.C." and the growing area designation;

- (d) the shellfish lease or franchise number, if applicable;
- ~~(d)~~(e) Type ~~type~~ and quantity of ~~shellfish~~ shellfish;
- ~~(e)~~(f) ~~The~~ the following statement in bold, capitalized ~~type;font:~~ "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON ~~FILE~~ FILE, IN CHRONOLOGICAL ORDER, ~~FOR 90 DAYS~~ FOR 90 DAYS."; and
- ~~(f)~~(g) the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

*History Note:* Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221~~; 143B-289.52;  
Eff. October 1, 2008;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03K .0208 is proposed for reoption with substantive changes as follows:

**15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS**

(a) For the purpose of this Rule and 15A NCAC 03R .0116, "Seed Oyster Management Area" shall mean a shellfish producing habitat area located in open harvest waters that has environmental conditions unsuitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to allow the transfer of oysters to shellfish leases or franchises that have more suitable environmental conditions for further grow-out.

(b) The Fisheries Director may, by proclamation, modify or close Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for the protection of public health related to the public health programs under the authority of the Marine Fisheries Commission.

~~(c)~~ (c) It is shall be unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.

~~(d)~~ (d) It is shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

*History Note: Authority G.S. 113-134; 113-182; 113-203; ~~113-221~~; 143B-289.52;  
Eff. October 1, 2008;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 03K .0209 is proposed for readoption with substantive changes as follows:

**15A NCAC 03K .0209 OYSTER SANCTUARIES**

~~(a) It is unlawful to use a trawl net, long haul seine, or swipe net in Oyster Sanctuaries designated in 15A NCAC 03R .0117. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.~~

(a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.

(b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.

(c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(d) It is shall be unlawful to use mechanical methods for oystering or clamming in, or to take oysters or clams from shellfish from, Oyster Sanctuaries designated in 15A NCAC 03R .0117, .0117 or in accordance with Paragraph (c) of this Rule.~~

(e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;*

*Eff. October 1, 2008;*

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

15A NCAC 18A .0135 is proposed for readoption with substantive changes as follows:

**15A NCAC 18A .0135 PERMITS**

- (a) ~~No person shall~~ It shall be unlawful to operate a processing facility without a permit issued by the Division, ~~first~~ obtaining a Crustacea Permit and Certificate of Compliance from the Division of Marine Fisheries.
- (b) ~~No person shall operate a repacker facility without a repacker permit issued by the Division.~~
- (~~e~~)(b) Application for a permit shall be submitted in writing on an application form available from to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (~~d~~)(c) No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with applicable rules of this Section. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (e) ~~A permit issued to one person is not transferrable to another person.~~
- (f) The permit shall be posted in a conspicuous place in the facility. ~~All permits shall expire on March 31 of each year.~~
- (g) All permits shall expire on March 31 of each year and are non-transferrable.
- (~~e~~)(h) Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or making a change.
- (~~h~~)(i) A permit may be revoked or suspended pursuant to G.S. 130A-23 in accordance with 15A NCAC 03O .0504.
- (i) ~~The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.~~

*History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~  
Eff. October 1, 1992;  
Amended Eff. April 1, 1997;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 18A .0302 is proposed for readoption with substantive changes as follows:

**15A NCAC 18A .0302 PERMITS**

(a) ~~No person shall~~ It shall be unlawful to operate any of the following facilities without a permit issued by the Division first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:

- (1) ~~Depuration~~ depuration facilities;
- (2) repacking plants;
- ~~(2)~~(3) ~~Shellstock~~ shellstock plants; and
- ~~(3)~~(4) ~~Shucking~~ shucking and packing ~~plants;~~ plants.
- (4) ~~Repacking plants.~~

(b) ~~No person shall~~ It shall be unlawful to operate as a shellstock dealer without a permit issued by the Division first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.

(c) ~~A permit may be issued to a reshipper when required for out of state shipment.~~ It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.

(d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.

(e) Application for a permit shall be submitted in writing to the ~~Division at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina, 28557.~~ Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557. Application forms are available ~~may be~~ obtained from the ~~Division.~~ Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.

(f) No permit shall be issued by the Division until an inspection by the Division shows that the ~~facilities~~ facility and equipment comply with all applicable rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.

(g) All permits shall be posted in a conspicuous place in the ~~facilities.~~ facility. ~~All permits shall expire on April 30 of each year.~~ facility.

(h) All permits shall expire on April 30 of each year and are non-transferrable.

~~(h)~~(i) Plans and specifications for proposed new ~~construction or remodeling~~ construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and ~~approval.~~ approval prior to beginning construction or making a change.

~~(i)~~(j) A permit may be revoked or suspended ~~pursuant to G.S. 130A-23.~~ in accordance with 15A NCAC 030 .0504.

*History Note:* Authority ~~G.S. 130A-230;~~ 113-134; 113-182; 113-221.2; 143B-289.52;  
*Eff. February 1, 1987;*  
*Amended Eff. April 1, 1997;*  
*Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 18A .0303 is proposed for repeal through readoption as follows:

**15A NCAC 18A .0303 RELAYING PERMITS**

~~If a person is granted a relaying permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for conditioning and purification prior to marketing and marketed after relaying in a large body of clean water, but only under the following conditions:~~

- ~~(1) — Application for relaying must be received by the North Carolina Division of Marine Fisheries and the Division 15 days prior to relaying.~~
- ~~(2) — Removal and relaying shall be under the supervision of the Division and the Division of Marine Fisheries.~~
- ~~(3) — Shellfish relayed from a prohibited area to a designated area of approved water shall remain down for a period of not less than fourteen days when the water in which shellfish are relayed has a temperature above 50°F (10°C). When the water temperature is below 50°F (10°C), shellfish shall not be relayed.~~

*History Note: Authority G.S. 130A-230;  
Eff. February 1, 1987;  
Amended Eff. September 1, 1990;  
Repealed Eff. (Pending legislative review of 15A NCAC 03K .0104).*

15A NCAC 18A .0304 is proposed for repeal through readoption as follows:

**15A NCAC 18A .0304    DEPURATION HARVESTING PERMITS**

~~If a person is granted a depuration harvesting permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for depuration prior to marketing and marketed after depuration in a permitted facility, but only under the following conditions:~~

- ~~(1) — Application for a depuration harvesting permit must be received by the Division of Marine Fisheries and the Division 15 days prior to harvesting for depuration purposes.~~
- ~~(2) — Harvesting for depuration purposes shall be under the supervision of the Division and the Division of Marine Fisheries.~~

*History Note:    Authority G.S. 130A-230;  
                      Eff. February 1, 1987;  
                      Amended Eff. September 1, 1990;  
                      Repealed Eff. May 1, 2022.*



15A NCAC 18A .0425 is proposed for readoption with substantive changes as follows:

**15A NCAC 18A .0425 TAGGING ~~DEALER~~ TAGS**

(a) ~~In order that information may be available to the Division with reference to the origin of shellstock, Consistent with the rules of this Section, it shall be unlawful to possess containers holding shellstock shall be identified with~~ without a uniform dealer tag or label affixed after the shellstock is processed or shipped by the initial certified shellfish dealer. The tag shall be durable, waterproof-waterproof, and measure at least 2 5/8 by 5 1/4 inches (6.7 by 13.3 centimeters)-a minimum of two and five-eighths inches by five and one-fourth inches in size. The ~~It shall be unlawful for the tag shall to fail to~~ contain legible information arranged in the specific order as follows:

- (1) the dealer's name, ~~address-address,~~ and certification number assigned by the appropriate shellfish control agency;
- (2) the original shipper's certification number;
- (3) the harvest ~~date;date,~~ or if depurated, the date of depuration processing, or if wet stored, the original harvest date, and the final harvest date, which is the date removed from wet storage;
- (4) if wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";
- ~~(4)(5)~~ the harvest location, including the country or state abbreviation;the most precise identification of the harvest location as is practicable, including the initials of the State of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);
- (5) ~~when the shellstock has been in wet storage, the statement "THIS PRODUCT WAS IN WET STORAGE AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";~~
- (6) the type and quantity of ~~shellfish;shellstock;~~
- (7) the following ~~statement shall appear-statements in bold-bold, capitalized type font:~~
  - (A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE-FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS;"-DAYS."; and
  - (B) "RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) \_\_\_\_\_.";
- (8) the following statement, or ~~equivalent, equivalent:~~

"Consumer Advisory  
Eating raw oysters, ~~clams-clams,~~ or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat raw shellfish and become sick, see a doctor ~~immediately."~~immediately."; and

(9) the following statement, or equivalent:

"Keep Refrigerated".

(b) The ~~uniform-dealer~~ tag or label shall remain attached to the shellstock container until the container is empty and thereafter shall be kept on ~~file-file, in chronological order,~~ for 90 days.

(c) ~~All shellstock from a depuration facility must be identified as having been cleansed by a depuration facility identified by a name and permit number on the tag.~~

*History Note: Authority G.S. ~~130A-230;~~ 113-134; 113-182; 113-221.2; 143B-289.52;  
Eff. February 1, 1987;  
Amended Eff. April 1, 1997; January 4, 1994; December 1, 1987;  
Temporary Amendment Eff. October 12, 1998; February 1, 1998;  
Amended Eff. April 1, 1999;  
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 18A .0912 is proposed for repeal through readoption as follows:

**15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS**

~~When the Division of Marine Fisheries begins operations to relocate shellfish from a restricted or conditionally approved area to an approved area, the Division will recommend to the Division of Marine Fisheries that the area of relocation be closed until cleansing requirements for relayed shellfish have been satisfied.~~

*History Note: Authority G.S. 130A-230;  
Eff. June 1, 1989;  
Repealed Eff. April 1, 2022.*