REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0101

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   In (1)(c), line 19, is “Coastal Fishing Waters” as defined in 03Q .0103? If so, a cross reference would be useful here.

   In (1)(f), p.2, line 1, what are “shellfish growing waters”?

   In (1)(f)(iv), line 11, what are the “other potential sources of pollution” that would render consumption of shellfish hazardous? Are these defined elsewhere?

   In (1)(f)(v), do I understand correctly that the Division presumes that shellfish growing waters are polluted unless monitoring shows that they are not? Is there statutory authority for this?

   In (5)(d), p.9, line 13, does “franchise” refer only to perpetual franchises, or are there other kinds of franchises recognized by the law?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03I .0101 is readopted as published in 36:07 NCR 453-460 as follows:

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

All definitions set out in G.S. 113, Subchapter IV and the following additional terms shall apply to this Chapter:

(1) Enforcement and management terms:

(a) Commercial Quota. "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.

(b) Educational Institution. A "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of Environment and Natural Resources Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.

(c) Internal Coastal Waters or Internal Waters. All "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.

(d) Length of finfish:

(i) Curved fork length. A "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.

(ii) Fork length. A "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

(iii) Pectoral fin curved fork length. A "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

(iv) Total length. A "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.

(e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.
"Polluted" means any shellfish growing waters:

(i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;

(ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A.0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;

(iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A.0901 to be in or adjacent to a marina;

(iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A.0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or

(v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.

Recreational Possession Limit. Restrictions "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

Recreational Quota. Total "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.

Regular Closed Oyster Season. "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.

Scientific Institution. One "Scientific institution" means one of the following entities:

(i) An educational institution as defined in this Item;

(ii) A state or federal agency charged with the management of marine or estuarine resources; or

(iii) A professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Subitems (b)(i) Sub-items (j)(i) and (ii) of this Item.

Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.

Fishing Activities. Fishing activities:

(a) Aquaculture operation. An "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such
stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:

(i) food;
(ii) predator protection;
(iii) salinity;
(iv) temperature controls; or
(v) water circulation, utilizing technology not found in the natural environment.

(b) Attended. Being "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.

(c) Blue Crab Shedding. The "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:

(i) food;
(ii) predator protection;
(iii) salinity;
(iv) temperature controls; or
(v) water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.

(d) Depuration. Purification "Depuration" means mechanical purification or the removal of adulteration from live oysters, clams, or mussels by any natural or artificially controlled means.

(e) Long Haul Operations. Fishing "Long haul operation" means fishing a seine towed between two vessels.

(f) Peeler Crab. A "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.

(g) Possess. Any "Possess" means any actual or constructive holding whether under claim of ownership or not.

(h) Recreational Purpose. A "Recreational purpose" means a fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
(i) **Shellfish marketing from leases and franchises.** The "Shellfish marketing from leases and franchises" means the harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(j) **Shellfish planting effort on leases and franchises.** The "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks from polluted waters and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

(k) **Shellfish production on leases and franchises.** "Shellfish production on leases and franchises" means:

   (i) The culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.

   (ii) The transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

(l) **Swipe Net Operations.** Fishing "Swipe net operations" means fishing a seine towed by one vessel.

(m) **Transport.** "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

(n) **Use.** "Use" means to employ, set, operate, or permit to be operated or employed.

3 Gear:

(a) **Bunt Net.** The "Bunt net" means the last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.

(b) **Channel Net.** A "Channel net" means a net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.

(c) **Commercial Fishing Equipment or Gear.** All "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:

   (i) **Cast-cast nets;**

   (ii) **Collapsible-collapsible crab traps,** a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;

   (iii) **Dip-dip nets** or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
(iv) **Gigs** or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;

(v) **Hand** -operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;

(vi) **Hook** and **line** and bait and line equipment other than multiple-hook or multiple-bait trotline;

(vii) **Landing** nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;

(viii) **Minnow** traps when no more than two are in use;

(ix) **Seines** less than 30 feet in length;

(x) **Spears**, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

(d) **Corkline**. The "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.

(e) **Dredge**. A "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

(f) **Fixed or stationary net**. A "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

(g) **Fyke Net**. An "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

(h) **Gill Net**. A "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.

(i) **Headrope**. The "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.

(j) **Hoop Net**. An "Hoop net" means an entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with
tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

(k) **Lead.** A "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.

(l) **Mechanical methods for clamming. Dredges.** "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.

(m) **Mechanical methods for oystering. Dredges.** "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.

(n) **Mesh Length.** The "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.

(o) **Pound Net Set. A.** "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.

(p) **Purse Gill Nets.** Any "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.

(q) **Seine.** A "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.

(4) **Fish habitat areas.** The "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:

(a) **Anadromous fish nursery areas.** Those "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
(b) *Anadromous fish spawning areas.* Those "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

(c) *Coral.* "Coral" means:

(i) Fire-fire corals and hydrocorals (Class Hydrozoa);
(ii) Stony-stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
(iii) Octocorals, Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (Gorgonia sp.), sea whips (Leptogorgia sp. and Lophogorgia sp.), and sea pansies (Renilla sp.).

(d) *Intertidal Oyster Bed.* A "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.

(e) *Live rock.* Living "Live rock" means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:

(i) Coralline algae (Division Rhodophyta);
(ii) Acetabularia sp., mermaid's fan and cups (Udotea sp.), watercress (Halimeda sp.), green feather, green grape algae (Caulerpa sp.) (Division Chlorophyta);
(iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta);
(iv) Sponges (Phylum Porifera);
(v) Hard hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
(vi) Bryozoans (Phylum Bryoza);
(vii) Tube-tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
(viii) Mussel mussel banks (Phylum Mollusca: Gastropoda); and
(ix) Acorn-acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).

(f) *Nursery areas.* Areas "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
(g) **Shellfish producing habitats.** Historic "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

(h) **Strategic Habitat Areas.** Locations "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.

(i) **Submerged aquatic vegetation (SAV) habitat.** Submerged "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:

   (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (Najas guadalupensis), coontail (Ceratophyllum demersum), eelgrass (Zostera marina), horned pondweed (Zannichellia palustris), naiads (Najas spp.), redhead grass (Potamogeton perfoliatuus), sago pondweed (Stuckenia pectinata, formerly Potamogeton pectinatus), shoalgrass (Halodule wrightii), slender pondweed (Potamogeton pusillus), water stargrass (Heteranthera dubia), water starwort (Callitriche heterophylla), waterweeds (Elodea spp.), widgeongrass (Ruppia maritima), and wild celery (Vallisneria americana). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or

   (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or this Rule or Rules 03K .0304 15A NCAC 03K .0304 and .0404, to apply to or conflict with the non-development control activities authorized by that Act.
Licenses, permits, leases and franchises, and record keeping:

(a) **Assignment.** Temporary "Assignment" means temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.

(b) **Designee.** Any "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.

(c) **For Hire Vessel.** As "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.

(d) **Franchise.** "Franchise" means a franchise recognized pursuant to G.S. 113-206.

(e) **Holder.** A "Holder" means a person who has been lawfully issued in his or her name a license, permit, franchise, lease, or assignment.

(f) **Land.** "Land" means:
   (i) **For commercial fishing operations,** when fish reach the shore or a structure connected to the shore.
   (ii) **For purposes of trip tickets,** when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.
   (iii) **For recreational fishing operations,** when fish are retained in possession by the fisherman.

(g) **Licensee.** Any "Licensee" means any person holding a valid license from the Department to take or deal in marine fisheries resources.

(h) **Logbook.** Paper "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.

(i) **Master.** Captain "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.

(j) **New fish dealer.** Any "New fish dealer" means any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.

(k) **Office of the Division.** Physical "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island, and Elizabeth City, North Carolina. Other businesses or
entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.

(k)(l) Responsible party. Person "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.

(l)(m) Tournament Organizer. The "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

(m)(n) Transaction. Act "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.

(o)(p) Trip Ticket. Paper "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;
Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;
Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;
Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December 1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0104

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

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In reviewing this Rule, the staff recommends the following changes be made:

In (a)(1), line 10, please capitalize “coastal fishing waters” to be consistent with the rest of the Rule.

In (b)(1), lines 27-29, what is it that the Fisheries Director is determining? Is it the diseases that pose a risk to NC’s marine or estuarine resources/environment? If so, how is this determination made and how is the veterinary service to know what diseases these are?

In (c), line 33, add the Oxford comma following “quarantine”.

In (c), for my information, how can destruction of organisms/materials be a condition of a permit? What is being imported at that point?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03I .0104 INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND
ESTUARINE ORGANISMS

(a) In order to protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it shall be unlawful, except for American eels imported from Maryland, Virginia, or South Carolina for use in an aquaculture operation, without first obtaining a permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms from the Fisheries Director or without obtaining live marine and estuarine organisms from a permit holder:

(1) To place into the coastal fishing waters of the state live marine and estuarine organisms not native to the state. For the purpose of this Rule, this action is an introduction.

(2) To place into the coastal fishing waters of the state live marine and estuarine organisms which originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.

(3) To hold or maintain any live marine or estuarine organism, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the state in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in 15A NCAC 03I .0101.

(4) To sell for bait any live marine or estuarine organism, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the state.

(b) Any person desiring to obtain a Permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms must make written application to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500. In order for the Fisheries Director to determine the level of risk to any native marine or estuarine resource or the environment, the applicant shall provide also provide a certification from a:

(1) A certification from a pathologist that a sample of 60 organisms from proposed shipments are disease free or a certification from a governmental veterinary service that the organisms to be shipped were produced in an area or facility free of diseases posing a risk to North Carolina's marine or estuarine resources, or their environment, as determined by the Fisheries Director; and

(2) A certification from a biologist or veterinarian that macroscopic and microscopic examination indicates the shipment contains only those species, sizes, and quantities identified on the permit application.

(c) The Fisheries Director shall require disinfection, quarantine or destruction of organisms and transfer materials as a condition of the permit, upon finding the importation poses a risk to North Carolina's marine or estuarine resources, or their environment.

(d) The Fisheries Director may hold public meetings prior to granting permits for activities specified in Paragraph (a) of this Rule to gather information concerning risks to native marine or estuarine resources or the environment.
History Note: Authority G.S. 113-134; 113-170; 113-182; 143B-289.52; S.L. 2017-190; S.L. 2018-114;
Eff. January 1, 1991;
Amended Eff. November 1, 1991;
Recodified from 15A NCAC 31.0004 Eff. December 17, 1996;
Amended Eff. April 1, 2009;
Amended Eff. (Pending legislative review pursuant to S.L. 2017-190 and S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0105

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In reviewing this Rule, the staff recommends the following changes be made:

   In (c), line 11, the reference to Paragraph (c) should be changed to Paragraph (d).

   In (c), lines 14 and 16, does “agents of the Fisheries Director” refer to “inspectors” or “protectors” as defined in G.S. 113-136?

   Does this Rule have application to recreational fishermen who might use pots? Paragraphs (d) and (e) define the contours of “hardship” for commercial fisherman, but are silent for recreational fisherman.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03I .0105 is readopted as published in 36:07 NCR 461 as follows:

15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED

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

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

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

(d) (2) For the purposes of Paragraph (b) of this Rule only, purpose of this Rule, a timely and sufficient showing of hardship in a commercial fishing operation shall be written notice given a statement in writing from the owner of the pot or the owner’s immediate family, as defined in G.S. 113-168, submitted to the Fisheries Director that a mechanical breakdown of the pot owner’s vessel(s) vessel currently registered with the Division of Marine Fisheries under pursuant to G.S. 113-168.6, or the death, illness, or incapacity of the owner of the pot or his the owner’s immediate family, as defined in G.S. 113-168, family prevented or will prevent employing such pots in commercial fishing operations for more than five consecutive days. The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days without being employed in fishing operations, and shall state, in addition to the following, Statements and supporting documentation shall be mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Mailing a statement does not automatically exempt a fisherman from the requirements of this Rule. The statement shall specify the number and specific location of the pots, and the date on by which the pots will be employed in commercial fishing operations or removed from coastal fishing waters Coastal Fishing Waters, and:

(A)(1) in the case of a mechanical breakdown, the notice shall state the commercial fishing vessel registration Commercial Fishing Vessel Registration number, owner’s N.C. motor boat registration number of the disabled vessel, date disabled, and description of the arrangements being made to repair the vessel or a copy of the work order showing the name, address, and phone number of the repair facility; or
in the case of the death, illness, or incapacity of the owner of the pot or his immediate family, the notice shall state the name of the owner or immediate family member, and either the date of death, the date and nature of death or the date of the illness or incapacity.

The Fisheries Director may require a doctor's verification of the illness or incapacity.

The Fisheries Director may, by proclamation, modify the five day requirement, if necessary due to hurricanes, severe weather, or other variable conditions. Failure to employ in commercial fishing operations or remove from coastal fishing waters all pots for which notice of a hardship request is received under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule.

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

History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 1, 1999; Amended Eff. September 1, 2005; August 1, 2000; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0109

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

> It is unclear to me why you’ve added the reference to G.S. 113-182 in the History Note, as that statute doesn’t reference administrative hearings in any way. I would suggest adding references to both or either of G.S. 150B-22 and G.S. 113-131, or any other statute you are aware of that generally gives OAH jurisdiction over contested cases coming out of MFC.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03I .0109 is readopted as published in 36:07 NCR 462 as follows:

**ARTIFICIAL REEFS AND RESEARCH SANCTUARIES**

(a) The Fisheries Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment in and around any artificial reef or research sanctuary. Any closure or restriction shall be for no more than one year, subject to renewal at the discretion of the Fisheries Director is subject to the following conditions:

(1) Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.

(2) Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of the Fisheries Director.

(3) The economic effect of the closure or restriction on fishing interests with respect to the size and location of the area and the nature of the equipment affected shall be considered before such closure is made and findings shall be made in writing which findings shall be available for public inspection at the office of Division of Marine Fisheries in Morehead City.

(b) It shall be unlawful to engage in any fishing activity, use any equipment, or conduct any other operation which has been prohibited by proclamation issued under this authority.

*History Note: Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52; Eff. January 1, 1991;
Recodified from 15A NCAC 31.0009 Eff. December 17, 1996;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
15A NCAC 03I .0113 is readopted as published in 36:07 NCR 462 as follows:

**15A NCAC 03I .0113 BIOLOGICAL SAMPLING**

It **shall be** unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or his agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from fish in the licensee's possession. Such data shall include, but is not limited to, species identification, length, weight, age, sex, number, area of catch, harvest method, and quantity of catch.

**History Note:** Authority G.S. 113-134; 113-170.3; 113-170.4; 113-174.1; 113-182; 143B-289.52;

Eff. October 1, 1992;
Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0114

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(1), line 5, define or delete “accurately” and “legibly.”

In (a)(1), line 5, what are the mandatory items on the NC trip ticket? Are these defined elsewhere?

In (a)(5), line 18, does your regulated public know what software or web-based utilities are authorized by the Division?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS

(a) It is unlawful for a licensed fish dealer:

(1) To fail to complete accurately and legibly all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;

(2) To fail to provide to the Division of Marine Fisheries a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;

(3) To fail to make paper copies or electronic copies of trip tickets available at the dealer location for inspection by Marine Patrol Fisheries inspectors;

(4) To fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:

(A) Initiate electronic file transfer of trip tickets; and

(B) Continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;

(5) To fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and

(6) To fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic files, and accounts for a period of not less than three years.

(b) It is unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:

(1) A current and valid license or permit to sell the type of fish being offered and if a vessel is used, the commercial fishing vessel registration; Commercial Fishing Vessel Registration; and

(2) Complete and accurate information on harvest method and area of catch and other information required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

(c) It is unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped, the following items:

(1) name of the consignee;
(2) name of the shipper;
(3) date of the shipment;
(4) name of fish being shipped; and
(5) quantity of each fish being shipped.
In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers are exempt from this Paragraph of this Rule.

(d) It shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the record keeping requirements in G.S. 113-168.2(i).

(e) It shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine Patrol Fisheries inspectors or other agents of the Fisheries Director written documentation of purchase showing thereon the name of the licensed dealer, name of the purchaser, date of the purchase, and the quantity of each species purchased, the following items:

1. name of the licensed fish dealer;
2. name of the purchaser;
3. date of the purchase;
4. name of fish purchased; and
5. quantity of each fish purchased.

(f) It shall be unlawful for a holder of a Fish Dealer’s Dealer License to have fish in possession at a licensed location without written documentation from a licensed fish dealer or a completed North Carolina Marine Fisheries Trip Ticket to show the quantity and origin of all fish.

History Note: Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 113-182; 143B-289.52;
Eff. March 1, 1994;
Recodified from 15A NCAC 31 .0014 Eff. December 17, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. June 1, 2013; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03I .0118 is readopted as published in 36:07 NCR 463 as follows:

15A NCAC 03I .0118 DISPOSAL OF EVIDENCE

It shall be unlawful for any person to dispose of fish or fish, parts thereof, of fish, fishing equipment or gear, or other matter in any manner, preparatory to, during, or subsequent to the taking of fish after any communication or signal from an inspector, or after the approach of an inspector or an enforcement vessel.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. March 1, 1996;
Recodified from 15A NCAC 3I .0018 Eff. December 17, 1996;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0101

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (2), line 11, where is your statutory authority to regulate any “natural or manmade waterway[s]” and “river[s]” outside of the marine and estuarine environment?

In the History Note, do you need a reference to G.S. 113-181?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03J .0101 is readopted as published in 36:07 NCR 463 as follows:

SUBCHAPTER 3J-03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0101 FIXED OR STATIONARY NETS

It is unlawful to use or set fixed or stationary nets for any of the following:

1. In the channel of the Intracoastal Waterway or in any other location where it may constitute a hazard to navigation;

2. So as to block more than two-thirds of any natural or manmade waterway, sound, river, bay, creek, inlet, or any other body of water;

3. In the middle third of any marked navigation channel marked by State or federal agencies; or

4. In the channel third of the following rivers: Roanoke, Cashie, Middle, Eastmost, Chowan, Little, Perquimans, Pasquotank, North, Alligator, Pungo, Pamlico, and Yeopim.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0105

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b)(1)(A), line 9, and in (e), p.2, line 24, are there any relevant requirements laid out in SL 2012-190 that were not codified in G.S. 113-187? If not, I think the reference should be changed to cite to the G.S.

In (e), line 24, the Rule refers to Subparagraph (b)(6) of this Rule. The last subparagraph in (b) is (5). Please correct.

In (f), what is a “fish spill”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03J .0105 is readopted as published in 36:07 NCR 463-464 as follows:

15A NCAC 03J .0105  PURSE SEINES

(a) It shall be unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard shad, or pinfish, as further restricted by Paragraphs (b) and (c) of this Rule.

(b) It shall be unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish with use a purse seine in violation of any of the following limitations: accordance with the following:

1. In the Atlantic Ocean during the periods and within an area as described:
   - by Session Law 2012-190; and

2. Except as provided in Subparagraph (5) of this Paragraph, Paragraph (c) of this Rule, between January 16 and May 14 in:
   - Internal waters; and
   - the Atlantic Ocean within one mile of shore.

3. Between January 16 and March 31 in Core Sound.

4. In internal waters except in:
   - Pamlico Sound,
   - Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek,
   - Neuse River east of a line from Wilkinson Point to Cherry Point,
   - Adams Creek,
   - Core Sound and its tributaries,
   - Back Sound, the Straits, and North river,
   - Newport River,
   - North River, and
   - Bogue Sound.

4. from beyond one mile of shore in the Atlantic Ocean and transported to port between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day.

5. from beyond one mile of shore in the Atlantic Ocean and transported to port between the hours of sunrise and sunset on the following holidays:
   - Memorial Day;
   - Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday;
   - Labor Day.
(c) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (1) of this Paragraph (d) of this Rule between April 1 and May 14, and may impose any or all of the following restrictions:

(1) specify time;
(2) specify area;
(A) specify means and methods by area which may be employed in the taking; methods;
(4) specify record keeping requirements;
(5) specify season; and
(B) limit the quantity; and specify quantity;
(C) require submission of statistical and biological data.

(d) The internal waters specified in Paragraph (c) of this Rule are as follows:

(1) Pamlico Sound;
(2) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
(3) Neuse River east of a line from Wilkinson Point to Cherry Point;
(4) Adams Creek;
(5) Core Sound and its tributaries;
(6) Back Sound, the Straits, and North River;
(7) Newport River;
(8) North River; and
(9) Bogue Sound.

(e) Menhaden, Atlantic thread herring, gizzard shad, or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law 2007-320-2012-190 and Subparagraphs (b)(5) and (b)(6) of this Rule and except as prohibited below:

(1) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad, or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.
(2) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad, or pinfish by use of a purse seine between the hours of sunrise and sunset on the following holidays:
   (A) Memorial Day;
   (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday;
   and
   (C) Labor Day.

(f) It is unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:
(1) Immediately within two hours of the spill, notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries Communications Center of such spill; the spill by phone at 800-682-2632 or 252-726-7021; and

(2) Report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of spill clean-up on the circumstances associated with each spill and costs of its clean-up.

History Note: Authority G.S. 113-134; 113-182; 113-187; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. October 1, 2008; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03J .0109 is readopted as published in 36:07 NCR 464-465 as follows:

15A NCAC 03J .0109  LONG-HAUL FISHING OPERATIONS, IDENTIFICATION-LONG HAUL AND SWIPE NET REQUIREMENTS

It is shall be unlawful to tow or pull use a net in a long-haul or swipe net fishing excluding operations with nets made entirely of monofilament and having a mesh length of three inches or greater operation:

(1) Without without a floating buoy that shall be international orange, no less than five inches in diameter, and no less than 11 inches in length attached a minimum of every 100 yards along the cork line. The buoy shall be international orange and shall be no less than five inches in diameter and no less than 11 inches in length; and

(2) Without without a flag, flag that shall be square in shape, international orange in color, and at least 24 inches by 24 inches in size, flying in the rigging so as to be visible when approaching the vessel from any direction; and

(3) In the internal coastal waters Internal Coastal Waters south and west of a line beginning on the west shore of Pamlico Sound at Bluff Point at a point 35° 19.5333' N – 76° 09.3333' W; running southeasterly to Ocracoke Island to a point 35° 08.0000' N – 75° 55.0000' W; without escape panels as follows:

(a) For long haul operations, two panels four feet deep and six feet long shall be installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being bailed. The bailed, with panels shall be in the water while fish are harvested;

(b) For swipe net operations, two panels three feet deep and five feet long shall be installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being bailed. The bailed, with panels shall be in the water while fish are harvested;

(c) The upper edge of one panel shall be installed within 12 to 24 inches of the float line and the lower edge of the other panel shall be installed within 12 to 24 inches of the lead line; and

(d) The panels shall be constructed of unobstructed trawl rings with a minimum inside diameter no less than of one and nine-sixteenth inches (1 9/16”). The inches, with the rings shall be fastened together at a maximum of four points per ring.

History Note:  Authority G.S. 113-134; 113-182; 143B-289.4; 143B-289.52;

Eff. January 1991;
Amended Eff. August 1, 2004; April 1, 1999;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0110

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 4, for clarity, would it change the meaning to say “...use seines 30 feet or longer for recreational purposes...”

On lines 7-8, when you say the “gear owner’s last name and initials shall be identified on the attached buoy using an engraved buoy...” do you mean that the attached buoy shall be engraved? It sounds like you’re requiring a buoy attached to another buoy as currently drafted.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03J .0110 is readopted as published in 36:07 NCR 465 as follows:

15A NCAC 03J .0110   SEINES

It is shall be unlawful to use seines 30 feet or over in length for recreational purposes unless the net is marked by attaching to the corkline one a floating buoy, any shade of hot pink in color, which color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall always be identified on the attached buoy using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used, one of the following:

1. Gear owner's current motor boat registration number; or
2. Owner's U.S. vessel documentation name.

History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0301

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(2), lines 18-19, just to be clear, the two rules referenced—15A NCAC 03R .0118 and 15A 03R .0107—both define a series of fairly detailed geographical areas with ramifications for the timing of seasons and use of gear. I wanted to make sure there were no conflicts between these areas?

In (c), p. 2, line 2, when you say the “gear owner's last name and initials shall be identified on the attached buoy using an engraved buoy...” do you mean that the attached buoy shall be engraved? It sounds like you’re requiring a buoy attached to another buoy as currently drafted.

In (h) generally, what variable conditions are at play that allow the Fisheries Director to impose further restrictions?

In (h)(4), line 37, what “requirements” are at play here? Is this a waiver of the rest of this Rule, or of the Rules otherwise governing licensure, as defined by G.S. 150B-19(6)? If so, what specific guidelines will the Director consider in making this waiver?

In your History Note, do you need a reference to G.S. 113-168 or any of the statutes following it that pertain to commercial licenses, given the provisions of (h)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03J .0301 is readopted as published in 36:07 NCR 465-466 as follows:

SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301  POTS

(a) It is unlawful to use pots except during time periods and in areas specified herein:

(1) In Coastal Fishing in Internal Waters from December 1 through May 31, except that:
    (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 15 through February 7 of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 15 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots.
    (B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed from Internal Waters from March 1 through March 15.

(2) From Internal Waters from June 1 through November 30, north and east of the Highway 58 Bridge at Emerald Isle in the Northern Region designated in 15A NCAC 03R .0118(1):
    (A) in areas described in 15A NCAC 03R .0107(a).
    (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for and designate the areas described in 15A NCAC 03R .0107(b) or any part thereof, for the use of pots.

(3) From Internal Waters from May 1 through November 30 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation. Southern Region designated in 15A NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

(4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) It is unlawful to use pots:

(1) in any navigation channel marked by State or Federal agencies; or
(2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. That buoys shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any
color except yellow or hot pink or any combination of colors that include yellow or hot pink. The owner's last name and initials shall always be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. The If a vessel is used, the identification shall also include one of the following:

1. gear owner's current motorboat registration number; or
2. gear owner's U.S. vessel documentation name; or
3. gear owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

(f) It shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half inch, except until January 1, 2017 eel pots of any mesh length with an escape panel that is at least four inches square with a mesh length of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots shall be allowed.

(g) It is except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than two-three unobstructed escape rings that are at least two and five-sixteenths five-sixteenth inches inside diameter and located in the opposite outside panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:

1. unbaited pots;
2. pots baited with a male crab; and
3. pots set in areas and during time periods described in 15A NCAC 03R .0118.

(1) for pots with a divider:

(A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and
(B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.

(2) for pots without a divider:

(A) two escape rings shall be located on opposite panels of the pot; and
(B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.

For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

(h) The Fisheries Director may, by proclamation, exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:

1. specify time;
2. specify area;
3. specify means and methods;
4. specify requirements for a commercial fishing operation or for recreational purposes;
(5) specify record keeping and reporting requirements;
(4)(6) specify seasons and season, including a closed season for removal of all pots from Internal Waters;
(7) specify species; and
(5)(8) specify quantity.

(i) It is unlawful to use more than 150 crab pots per vessel in Newport River.
(j) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.
(k) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.
(l) It is unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" are defined as any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. September 1, 2000;
Amended Eff. May 1, 2015; April 1, 2014; September 1, 2005; August 1, 2004; August 1, 2002;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03J .0302 is readopted as published in 36:07 NCR 466 as follows:

15A NCAC 03J .0302  RECREATIONAL USE OF POTS

(a) It is **shall be** unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching **one** a floating buoy, any shade of hot pink in color, which color. **Buoys** shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner **gear owner's last name and initials** shall always be identified on the attached buoy using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. **Such** if a vessel is used, the identification shall **also** include the owner's last name and initials and if a vessel is used, one of the following:

   (1) Gear **gear owner's current motor boat registration number**

   (2) **Owner's U.S. vessel documentation name.**

(b) It is **shall be** unlawful for a person to use more than one crab pot attached to the shore along privately owned land or to a privately owned pier without possessing a valid Recreational Commercial Gear License.

History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;

  Eff. January 1, 1991;

  Temporary Amendment Eff. July 1, 1999;

  Amended Eff. April 1, 2011; August 1, 2000;

  Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0305

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 8, and (b), lines 17-18, when you say the “gear owner’s last name and initials shall be identified on the attached buoy using an engraved buoy…” do you mean that the attached buoy shall be engraved? It sounds like you’re requiring a buoy attached to another buoy as currently drafted.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03J .0305 TROTLINES (MULTIPLE HOOK OR MULTIPLE BAIT)

(a) It is unlawful to use multiple hook or multiple bait trotlines for recreational purposes unless such trotlines are each multiple hook or multiple bait trotline is marked by attaching to them at each end one floating buoy, any shade of hot pink in color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner’s last name and initials shall always be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include owner’s last name and initials and if a vessel is used, one of the following:

   (1) gear owner’s current motor boat registration number; or
   (2) gear owner’s U.S. vessel documentation name.

(b) It shall be unlawful to use multiple hook or multiple bait trotlines in a commercial fishing operation unless each multiple hook or multiple bait trotline is marked by attaching to them at each end a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner’s last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

   (1) gear owner’s current motor boat registration number; or
   (2) gear owner’s U.S. vessel documentation name.

History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52; Temporary Adoption Eff. July 1, 1999; Eff. August 1, 2000; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03J .0404 is adopted as published in 36:07 NCR 467 as follows:

15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

(a) For the purpose of this Rule:
   (1) "hand line" shall mean fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.
   (2) "hook and line" shall mean one or more hooks attached to one or more lines and shall include rod and reel, a fishing rod designed to be hand-held with a manually or electrically operated reel attached.
   (3) "spearfishing gear" shall mean spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

(b) It shall be unlawful to use fishing gear in Ocean Artificial Reefs designated in 15A NCAC 03R .0119 except hand line, hook and line, and spearfishing gear, and except as further limited in accordance with Paragraph (d) of this Rule.

(c) It shall be unlawful to possess finfish taken with spearfishing gear in excess of a recreational limit within the boundaries of a designated Ocean Artificial Reef.

(d) The Fisheries Director may, by proclamation, close the areas designated in 15A NCAC 03R .0119 to the use of specific fishing gear, including the gears otherwise allowed in Paragraph (b) of this Rule, based on biological impacts or user conflicts.

(e) The Fisheries Director may, by proclamation, designate and modify Ocean Artificial Reefs in Coastal Fishing Waters of the Atlantic Ocean, based on biological impacts or variable spatial distribution, including shifted artificial reef material.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52; Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0501-.0505

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Do you need a reference to G.S. 113-181 in your History Note for each of these Rules, given its reference to your statutory authority to regulate nets?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0501

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (d)(1), p.2, line 25, when you say the “gear owner’s last name and initials shall be identified on the attached buoy using an engraved buoy…” do you mean that the attached buoy shall be engraved? It sounds like you’re requiring a buoy attached to another buoy as currently drafted.

I do not understand what you’re requiring in (d)(2). Can you please clarify?

In (e), what are the variable conditions that would affect pound nets such that the Director could issue a proclamation under 113-221.1?

Also, please add G.S. 113-221.1 to your History Note.

Do you need a reference to G.S. 113-181 in your History Note, given it’s reference to your statutory authority to regulate nets?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03J.0501 is readopted as published in 36:07 NCR 467-468 as follows:

SECTION .0500 – POUND NETS

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

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

1. **Pound Net Set Permit.** A Division authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.

2. **Permit period.** One year from the date of issuance of a new or renewal pound net set permit.

3. **Deployed pound net.** Setting “Deployed pound net” means setting of any part of a pound net, net except for a location identification stake or, for a pound net used in the Atlantic Ocean, a location identification buoy placed at each end of a proposed new location.

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

5. **Operational pound net set.** A “Operational pound net set” means a pound net set as defined in 15A NCAC 03I.0101 and deployed according to rules and permit conditions with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish.

6. **Permit period.** Means from the date of issuance of a new or renewal Pound Net Set Permit to the expiration date.

7. **Pound Net Set Permit.** Means a Division of Marine Fisheries authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.

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

9. **Shrimp pound net.** A “Shrimp pound net” means a pound net set with all pounds (holding pen) constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal to two inches.

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

1. Be deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.

2. Fail to be operational for a minimum of 30 consecutive days during the pound net set permit period unless Pound Net Set Permit period, except the Fisheries Director may, by proclamation, waive this requirement if a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met or for compliance with the N.C. Southern Flounder Fishery Management Plan.
(c) It shall be unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:

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

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

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

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

(d) It shall be unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 03O .0302(a)(8) in coastal fishing waters unless the shrimp pound net is:

1. Marked by attaching to the offshore lead, one a floating buoy, any shade of hot pink in color, which is color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner's last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. The identification shall also include owner's last name and initials and if a vessel is used, one of the following:
   (A) Gear owner's current motor boat registration number; or
   (B) Owner's U.S. vessel documentation name.

2. Set a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational permitted shrimp pound net set.

(e) Escape Panels:

1. The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:
   (A) Specify size, number, and location;
   (B) Specify mesh length, but not more than six inches;
   (C) Specify time or season; and
(D) Specify areas.

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

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

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

History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0502

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b)(1), line 9, add an oxford comma following “organization.”

In (b)(2), line 13, what kind of convictions are at issue? In your 03O rules, you defined conviction; I think adding a similar definition here would be helpful.

In (c)(6), p. 2, lines 22-23, what are “management measures adopted in fishery management plans” in reference to?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03J .0502 is readopted as published in 36:07 NCR 468-469 as follows:

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

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

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

   (1) Applicant is an individual and not a corporation, partnership, organization or other entity;

   (2) Applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.

   (3) Applicant has in the past complied with all permit conditions, rules and laws related to pound nets.

   (4) Applicant holds proper valid license(s) and permit(s) necessary to fish the type of net indicated in the application.

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

   (1) A base map provided by the Division of Marine Fisheries indicating the proposed set location including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location.

   (2) Declaration of the type of pound net that will be deployed at the site. One of the following pound net fisheries shall be specified:

      (A) Flounder pound net set;

      (B) Bait pound net set;

      (C) Shrimp pound net set;

      (D) Blue crab pound net set; or

      (E) Other finfish pound net set.

(d) For proposed new location(s), the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application is deemed denied.

The applicant shall be notified of denial in writing. Approval shall be conditional based upon the applicant's continuing compliance with eligibility requirements set out in Paragraph (e) of this Rule and specific conditions contained on the Pound Net Set Permit. The applicant may contest final decision to approve or deny the denial of a Pound Net Set Permit application by filing a petition for a contested case hearing.
in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings under G.S. 150B-23.

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

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

History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. May 1, 2022.
15A NCAC 03J .0503 is readopted as published in 36:07 NCR 469 as follows:

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

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

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

*Eff. April 1, 2009;*

*Readopted Eff. May 1, 2022.*
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03J .0504

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 8, please clarify what investigations may be necessary?

Does the procedure outlined in lines 4-9 apply to permits transferred to family following the death of the permittee? If not, please clarify what “approved and processed by the Division” on line 16 means.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03J .0504 is readopted as published in 36:07 NCR 469 as follows:

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

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

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

Eff. April 1, 2009;

Readopted Eff. May 1, 2022.
15A NCAC 03J .0505 is readopted as published in 36:07 NCR 469-470 as follows:

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

(a) It is <u>shall be</u> unlawful for a permittee to:

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

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

   (B) A change to the type of net being set at the permitted site.

(2) To make false notifications.

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

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

(b) Pound net sets are <u>shall be</u> subject to inspection at all times.

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

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

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

Eff. April 1, 2009;

Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0101

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 11, please delete “such”.

In (b), lines 20-21, can you be more specific about what kind of “public health purposes not specified in Paragraph (a)” you're referring to?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03K .0101 is readopted as published in 36:07 NCR 470 as follows:

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS, AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS

(a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas which have been designated as prohibited polluted by proclamation by the Fisheries Director except as provided in 15A NCAC 03K Rules .0103, .0104, .0107, and .0401 of this Subchapter. The Fisheries Director shall issue such shellfish polluted area proclamations upon notice by the Division of Environmental Health that duly adopted if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Morehead City, NC 28557; 800-682-2632 or 252-726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.

(c) It shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina, except as provided in 15A NCAC 03I .0104.

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 143-221; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; 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.0102 is readopted as published in 36:07 NCR 470 as follows:

15A NCAC 03K.0102 RAKES PROHIBITED RAKES

It is unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

(1) oysters or scallops; or

(2) clams in any live oyster bed, or in any established bed of submerged aquatic vegetation as described defined in 15A NCAC 03I.0101, 0101 or in any established bed of salt water cordgrass (Spartinaalterniflora), alterniflora) that may exist together or separately.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; February 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0103 is readopted as published in 36:07 NCR 470-471 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. 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 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 readopted as published in 36:07 NCR 471 as follows:

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

(a) It shall be unlawful to take oysters or clams shellfish from prohibited (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 clams 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 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 .0105 is readopted as published in 36:07 NCR 471 as follows:

15A NCAC 03K .0105  RECREATIONAL HARVEST OF SHELLFISH

(a) It shall be unlawful to take oysters or clams from public bottoms on Sundays, and scallops from public bottoms on Saturdays and Sundays except:
   (1) during open seasons; and
   (2) for recreational purposes.

(b) It shall be unlawful to possess, for recreational purposes, more than:
   (1) 10 conchs or whelks per person per day, not to exceed 20 conchs or whelks per vessel per day;
   (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per day; and
   (3) 100 clams per person per day, not to exceed 200 clams per vessel per day.

History Note: Authority G.S. 113-134; 113-169.2; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; February 1, 1992; September 1, 1991;
Temporary Amendment Eff. October 9, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. May 1, 1997; March 1, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2000;
Readopted Eff. May 1, 2022.
15A NCAC 03K .0106 is readopted as published in 36:07 NCR 471 as follows:

**15A NCAC 03K .0106   TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT**

(a) It is **shall be** unlawful to take oysters or clams between the hours of sunset and sunrise on any day.

(b) It is **shall be** unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on Sunday **Sundays** or between sunset and sunrise on any day except that in New Hanover, Pender, and Brunswick Counties, oysters and clams may be unloaded until two hours after sunset.

(c) Oysters and clams taken on Sunday **Sundays** from public bottom under the provisions of 15A NCAC 03K Rule .0105 of this Section or from shellfish leases and franchises pursuant to G.S. 113-208 are **shall be** exempt from Paragraph (b) of this Rule.

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

Eff. January 1, 1991;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. October 1, 2008; August 1, 2000;

Readopted Eff. May 1, 2022.
15A NCAC 03K .0107 is readopted as published in 36:07 NCR 471-472 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. 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 species;
(2) Specify areas, except harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities;
(3) Specify harvest days;
(4) Specify time period;
(5) Specify quantity or size;
(6) Specify harvest methods; and
(7) Specify record keeping requirements.

(c) Depuration permits:

(1) It is 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 only. Permittees and designees harvesting under Depuration Permits must 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 addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, and telephone number of the depuration operation where the shellfish will be depurated.

(3) 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 or oysters harvested from prohibited (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 or oysters harvested from prohibited (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 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 .0108 is readopted as published in 36:07 NCR 472 as follows:

15A NCAC 03K .0108  DREDGES/MECHANICAL DREDGES AND MECHANICAL METHODS PROHIBITED

(a) It shall be unlawful to use mechanical methods, except mechanical methods for oystering and clamming mechanical methods for clamming and mechanical methods for oystering as defined in 15A NCAC 03I .0101, to take shellfish.

(b) It is unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in 15A NCAC 03K Rules .0201, .0204, .0302, .0304, .0304, .0404, .0501, and .0503 of this Subchapter:

1. within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (Spartina alterniflora) that may exist together or separately;
2. in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Oysters and Clams Shellfish on Shellfish Leases and Franchises;
3. in areas designated in 15A NCAC 03K Rule .0204 of this Subchapter and 15A NCAC 03R .0103; and
4. except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and 03K Rules .0201, .0302, .0404, .0501, and .0503 of this Subchapter.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. October 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0109 is readopted as published in 36:07 NCR 472-473 as follows:

**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, 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** 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 shall be securely fastened to the outside of each container in which shellstock is transported. A harvest 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 shall contain legible information arranged in the specific order as follows:

   a. The harvester's name, address, and shellfish license or standard or retired standard commercial fishing license.

   b. The date of harvest.

   c. The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay), that can be easily located by maps and charts, 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;

(e) Type and quantity of shellfish;

(f) The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS"; and

(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; 143B-221; 143B-289.52;

Eff. October 1, 2008;

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0111 is repealed through readoption as published in 36:07 NCR 473 as follows:

**15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES**

History Note: Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;
Eff. May 1, 2015;
Repealed Eff. (Pending legislative review of 15A NCAC 03O .0211).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0201

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b)(5), it is unclear to me how the minimum size limit can be “not less than three inches” but also be “not less than two and one-half inches” at the same time.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03K .0201 is readopted as published in 36:07 NCR 473-474 as follows:

SECTION .0200 – OYSTERS

15A NCAC 03K .0201   OYSTER HARVEST MANAGEMENT

(a) It is shall be unlawful to take or possess oysters from public bottom except from October 15 through March 31.

(b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of oysters:

   (1) specify time;
   (2) specify area;
   (3) specify means and methods;
   (4) specify season within the period set forth in Paragraph (a) of this Rule;
   (5) specify size, but the minimum size limit specified shall not be less than three inches, except the minimum size limit specified shall not be less than two and one-half inches to prevent loss of oysters due to predators, pests, or infectious oyster diseases; and
   (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard U.S. bushels in a commercial fishing operation per day.

History Note:  Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2017; October 1, 2008; March 1, 1996; September 1, 1991;
Readopted Eff. May 1, 2022.
15A NCAC 03K .0202 is readopted as published in 36:07 NCR 474 as follows:

15A NCAC 03K .0202  CULLING REQUIREMENTS FOR OYSTERS

(a) It is shall be unlawful to possess oysters which that have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by proclamation issued under the authority of Rule .0201 of this Section, or any combination thereof that exceeds a five-percent tolerance limit by volume. Oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken. In determining whether the tolerance limit is has been exceeded, the Fisheries Director or his agents may Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded and, graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by the entire quantity being graded or any portion thereof.

(b) All oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken.

(e)(b) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants permitted by the Division of Marine Fisheries.

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

Eff. January 1, 1991;
Amended Eff. March 1, 1996; September 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. May 1, 2017; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0204

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   In (2), line 10, please capitalize “state” if referring only to the State of North Carolina.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03K .0204 is readopted as published in 36:07 NCR 474 as follows:

15A NCAC 03K .0204  DREDGES / MECHANICAL METHODS FOR OYSTERING PROHIBITED

It is unlawful to use any dredge or other mechanical method for oystering as defined in 15A NCAC 03I .0101 to take oysters:

(1) in the Mechanical Methods Prohibited areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises by permit; a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; and

(2) on any posted bottoms upon which oysters or shells have been planted by the state, unless such bottoms have been opened to the public and dredging permitted.

History Note: Authority G.S. 113-134; 113-182; 113-204; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004; May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0205 is readopted as published in 36:07 NCR 474 as follows:

15A NCAC 03K .0205  MARKETING OYSTERS TAKEN FROM A PRIVATE SHELLFISH BOTTOMS LEASE OR FRANCHISE

(a) It shall be unlawful to take, possess, buy, or sell oysters from a shellfish lease or franchise during the open season unless such oysters have been culled in accordance with Rule 15A NCAC 03K .0202 of this Section.

(b) It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division, that the oysters were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.

(b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(c) It shall be unlawful for a shellfish lease or franchise holder or their designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a shellfish lease or franchise.

(d) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. 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 .0207 is readopted as published in 36:07 NCR 474 as follows:

15A NCAC 03K .0207  OYSTER SIZE AND HARVEST LIMIT EXEMPTIONS

Possession and sale of oysters by a hatchery or oyster aquaculture operation and purchase and possession of oysters from a hatchery or oyster aquaculture operation shall be exempt from bag and size limit restrictions set under authority of 15A NCAC 03K .0201 and 03K .0202 as set forth in Rules .0201 and .0202 of this Section. It is unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture Operations Permit as set forth in 15A NCAC 03O .0503.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Temporary Adoption Eff. October 1, 2001;
Eff. April 1, 2003;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0208

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In your History Note, I believe you need a reference to G.S. 113-221.1, with respect to the mention of the Director’s authority to issue proclamations.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03K .0208 is readopted as published in 36:07 NCR 474-475 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.

(a)(c) It 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.

(b)(d) It 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; 143B-289.52;
Eff. October 1, 2008;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0209

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), lines 16-17, can you be more specific as to the meaning of “biological impact” and “user conflict”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03K .0209 is readopted as published in 36:07 NCR 475 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 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 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).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0301

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

  In (a), line 10, as the subject of the sentence is “Clams” please change “it was” to “they were”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03K .0301 is readopted as published in 36:07 NCR 475 as follows:

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS

(a) It is unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It is unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with 15A NCAC 3K .0305(b) Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which it was taken. Agents of the Fisheries Director are In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of clams being graded, and in cases of violations, may seize and return to public bottom or other disposition of the clams as authorized by law of the entire quantity being graded or any portion thereof.

(b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in 15A NCAC 3K .0302 Rule .0302 of this Section may or may not apply for:

(1) For harvest limits for temporary openings made upon the recommendation of Division of Environmental Health consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan;

(2) For maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery Management Plan; or

(3) For relaying of polluted clams from polluted waters to private shellfish bottoms as permitted by 15A NCAC 3K .0104 Rule .0104 of this Subchapter.

History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52; Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0302 is readopted as published in 36:07 NCR 475-476 as follows:

**15A NCAC 03K .0302  MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM**

(a) **It is shall be** unlawful to take, buy, sell, or possess any clams taken by mechanical methods as defined in 15A NCAC 03I .0101, "mechanical methods for clamming," from public bottom unless the season is open.

(b) The Fisheries Director may, by proclamation, open and close the season for the taking of clams by mechanical methods from public bottom at any time in the Atlantic Ocean and only from December 1 through March 31 in Internal Coastal Waters.

(c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that were opened at any time from January 1979 through September 1988 in:

1. Newport, North, White Oak, and New rivers;
2. Core and Bogue sounds;
3. the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
4. the Atlantic Ocean.

Other areas opened for purposes as set out in 15A NCAC 03K Rule .0301(b) of this Section shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(d) The Fisheries Director may, by proclamation, impose any of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:

1. specify time;
2. specify means and methods;
3. specify size; and
4. specify quantity.

**History Note:** Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. May 1, 2017; April 1, 2003;  
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0304

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 11, consider capitalizing “internal waters” as it is capitalized in other Rules.

In (b), line 15, please consider revising “such activities” to clarify the purpose of this portion of the Rule. It is unclear whether “such activities” refers to the activities permitted under .0104, .0107, and .0401, or the activities permitted under this Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03K .0304 is readopted as published in 36:07 NCR 476 as follows:

**15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS**

(a) It is **shall be** unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, mechanical methods for clamming as defined in 15A NCAC 03I .0101, except as provided in 15A NCAC 03K Rule .0302 and .0303 of this Section. Regardless of the areas which may be opened, it is **shall be** unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as **described** defined in 15A NCAC 03I .0101 or salt water cordgrass (Spartina alterniflora) that may exist together or separately.

(b) It is **shall be** unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick/deflector kick or deflector plates **normally** otherwise used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with 15A NCAC 03K .0302(a) of this Section. A period of 14 days before and after the season as specified by proclamation will **shall be** allowed for the installation and removal of kick/deflector kick or deflector plates and clam trawls or cages. Vessels with permits for activities provided for in 15A NCAC 03K Rules .0104, .0107, .0303(a), and .0401 of this Subchapter shall be exempt from this Rule during the times such activities are permitted.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 
Eff. January 1, 1991; 
Amended Eff. October 1, 2008; February 1, 2008; May 1, 1997; July 1, 1993; 
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0305 is readopted as published in 36:07 NCR 476 as follows:

**15A NCAC 03K .0305  CLAM SIZE AND HARVEST LIMIT EXEMPTIONS**

Possession and sale of clams by a hatchery or clam-aquaculture operation and purchase and possession of clams from a hatchery or clam-aquaculture operation shall be exempt from bag and size limit restrictions in 15A NCAC 3K .0301(a) as set forth in Rule .0301 of this Section. It is unlawful to possess, sell, purchase, or transport such clams unless they are in compliance with all conditions of the Aquaculture Operation Permit as set forth in 15A NCAC 03O .0503.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0401 is readopted as published in 36:07 NCR 476 as follows:

SECTION .0400 - RANGIA CLAMS

15A NCAC 03K .0401 PROHIBITED (POLLUTED) POLLUTED AREA PERMIT REQUIREMENTS

It is shall be unlawful to take Rangia clams or their shells by any method from prohibited (polluted) polluted waters without first obtaining a Permit to Harvest Rangia Clams from Prohibited (Polluted) Polluted Areas from the Fisheries Director. The permit application shall include a list of all designees operating under the permit. The permit shall designate the area, means and methods, and times in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for disposing of Rangia clam meats. 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; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0505

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 4, please remove the parenthetical and incorporate into the body of the Rule. Also, as height and length can be two different things, please clarify which dimension you’re attempting to regulate.

On line 5, please clarify the language regarding the 10% tolerance. If it’s your intent to say that scallops up to 10% smaller than 3.5 inches can be taken, the language doesn’t make that clear.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: 4/4/22
15A NCAC 03K .0505 is readopted as published in 36:07 NCR 476 as follows:

15A NCAC 03K .0505 SEA SCALLOPS SIZE LIMIT AND TOLERANCE

It is shall be unlawful to land or possess sea scallops with a shell height (length) of less than three and one-half inches. A tolerance of not more than ten (10) percent by number for undersized sea scallop shell height shall be allowed. In determining whether the proportion of undersized sea scallops exceeds the ten percent tolerance limit, the Fisheries Director and his agents are authorized to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may require seizure or other disposition, seize and return to public bottom or otherwise dispose of the sea scallops as authorized by law.

History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03K .0507 is amended as published in 36:07 NCR 476 as follows:

**MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**

(a) It shall be unlawful to sell, purchase, or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division of Marine Fisheries, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.

(b) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a shellfish leases lease or franchise.

(c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

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

*Eff. May 1, 2015;*

*Readopted Eff. April 1, 2019;*

*Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*
1A NCAC 03L .0101 is readopted as published in 36:07 NCR 476-477 as follows:

SUBCHAPTER 03L – SHRIMPS, SHRIMP, CRAB, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0101  SHRIMP HARVEST RESTRICTIONS

(a) It shall be unlawful to take shrimp until the Fisheries Director, by proclamation, opens the season.

(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of shrimp:

(1) specify time;
(2) specify area;
(3) specify means and methods;
(4) specify season;
(5) specify size; and
(6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2015;
Readopted Eff. May 1, 2022.
15A NCAC 03L .0102 is readopted as published in 36:07 NCR 477 as follows:

15A NCAC 03L .0102  WEEKEND SHRIMPING PROHIBITED

It is unlawful to take shrimp by any method from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:

1. in the Atlantic Ocean;
2. with the use of fixed nets, channel nets, hand seines, shrimp pots, or cast nets; or
3. for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2017; August 1, 2004; March 1, 1994;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03L .0103 is readopted as published in 36:07 NCR 477 as follows:

**15A NCAC 03L .0103  PROHIBITED NETS, MESH LENGTHS, LENGTHS, AND AREAS**

(a) It shall be unlawful to take shrimp with nets with mesh lengths less than the following:

1. **Trawl net**—trawl nets: one and one-half inches;
2. **Fixed nets**, channel nets, float nets, butterfly nets, and hand **seines**—seines: one and one-fourth inches; and
3. **Cast net**—cast nets: no restriction.

(b) It shall be unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh length. Net material used as chafing gear shall be no less than four inches mesh length, except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It shall be unlawful to take shrimp with trawls that have a combined headrope of greater than 90 feet in Internal Coastal Waters in the following areas:

1. North of the 35° 46.3000' N latitude line;
2. Core Sound south of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line;
3. Pamlico River upstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
4. Neuse River southwest of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) Effective January 1, 2017 it is it shall be unlawful to take shrimp with trawls that have a combined headrope of greater than 220 feet in Internal Coastal Waters in the following areas:

1. Pamlico Sound south of the 35° 46.3000' N latitude line and north of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks;
2. Pamlico River downstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
3. Neuse River northeast of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(e) It shall be unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

(f) It shall be unlawful to use channel nets except as provided in 15A NCAC 03J .0106.

(g) It shall be unlawful to use shrimp pots except as provided in 15A NCAC 03J .0301.
(h) It is unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. These federal rules are incorporated by reference including subsequent amendments and editions. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at https://www.gpoaccess.gov/cfr/index.html https://www.ecfr.gov/cgi-bin/ECFR and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557 at no cost.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2015; April 1, 2009; July 1, 2006;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03L .0105

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (2), line 8-9, am I reading this correctly that recreational shrimpers can take shrimp from an area closed to the taking of shrimp?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03L .0105 is readopted as published in 36:07 NCR 477 as follows:

15A NCAC 03L .0105  RECREATIONAL SHRIMP LIMITS

It is unlawful to:

1. Possess from areas open to the harvest of shrimp more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303(e) and (f).

2. Take or possess more than four quarts, heads on or two and one-half quarts, heads off, of shrimp per person per day with a cast net from areas closed to the taking of shrimp.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. April 1, 2009;
Amended Eff. May 1, 2015; June 1, 2013;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03L .0201 is readopted as published in 36:07 NCR 477-478 as follows:

SECTION .0200 – CRABSCRAB

15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS

(a) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(1) from January 1 through January 31, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(b) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(2) from March 1 through March 15, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.

(b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:

1. soft crabs;
2. pink and red-line peeler crabs;
3. white-line peeler crabs; and
4. from March 1 through October 31, male crabs to be used as peeler crab bait.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(c) It shall be unlawful to possess more than five percent by number of the following hard blue crabs in any combination in any container:

1. male hard blue crabs less than five inches from tip of spike to tip of spike;
2. immature female hard blue crabs;
3. mature female hard blue crabs less than five inches from tip of spike to tip of spike; and
4. mature female hard blue crabs with a dark (brown or black) sponge from April 1 through April 30 statewide. For the purpose of this Rule, a "mature female hard blue crab with a dark sponge" shall mean a mature female hard crab that has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.

(d) It shall be unlawful to possess blue crabs described in Subparagraphs (c)(1) through (c)(3) of this Rule unless individual crabs are sorted and placed into separate containers for each of the following categories:

1. soft crabs;
(2) pink and red-line peeler crabs;
(3) white line peeler crabs; and
(4) from March 1 through October 31, male crabs to be used as peeler crab bait.

All blue crabs not sorted into containers as specified shall be deemed hard blue crabs for the purpose of establishing the five percent tolerance described in Paragraph (c) of this Rule.

(c) It is unlawful to possess more than five percent by number of white-line peeler crabs in a container of pink and red-line peeler crabs except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(d) It is unlawful to:
(1) sell white-line peeler crabs;
(2) possess white-line peeler crabs unless they are to be used in the harvester's permitted blue crab shedding operation; and
(3) possess male white-line peeler crabs from June 1 through September 1.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(e) It is unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day for recreational purposes, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(f) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and take the following actions for may further restrict commercial and recreational blue crab harvest by imposing any of the following requirements on the taking of blue crabs:
(1) specify areas;
(2) specify seasons;
(3) specify time periods;
(4) specify means and methods;
(5) specify culling tolerance; and
(6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

(i) It shall be unlawful to fail to immediately return hard blue crabs not meeting the requirements of this Rule to the waters from which they were taken.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 1997; July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2014; September 1, 2005; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03L .0202 is readopted as published in 36:07 NCR 478-479 as follows:

15A NCAC 03L .0202 CRAB TRAWLING

(a) It shall be unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It shall be unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl shall be three inches, except:

1. The minimum mesh length shall be four inches in the area of western Pamlico Sound west of a line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "1" at the southern end of Roanoke Island; running southerly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04.6167' N - 76° 27.8000' W on Point of Marsh; and

2. The Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It shall be unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. February 1, 1991;
Amended Eff. April 1, 2014; September 1, 2005; August 1, 2004; March 1, 1994; September 1, 1991;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03L .0203 is readopted as published in 36:07 NCR 479 as follows:

15A NCAC 03L .0203  CRAB DREDGING

(a) It is **shall be** unlawful to take crabs with dredges except:

1. from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109;
2. incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph (a)(1) of this Rule provided the weight of the crabs shall not exceed the lesser of:
   1. 50 percent of the total weight of the combined oyster and crab catch; or
   2. 500 pounds, whichever is less.

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

(b) It is unlawful to take crabs with dredges between sunset and sunrise and between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2014; May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03L .0204 is readopted as published in 36:07 NCR 479 as follows:

15A NCAC 03L .0204   CRAB POTS

(a) It is shall be unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

   (1) specify areas;
   (2) specify time periods; and
   (3) specify means and methods.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2014;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03L .0205

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), where is your statutory authority for the Director to designate areas as crab spawning sanctuaries by proclamation? As I read G.S. 113-221.1, the proclamation authority extends only to waiving or imposing already established Rules.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03L .0205 is readopted as published in 36:07 NCR 479 as follows:

15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES

(a) It is unlawful to set or use trawls, pots, and mechanical methods for oysters or clam shellfish or take crabs with the use of commercial fishing equipment from the crab spawning sanctuaries described in 15A NCAC 03R .0110 from March 1 through August 31 in crab spawning sanctuaries:

(1) from March 1 through August 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(1); and

(2) from March 1 through October 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(2).

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

(1) specify areas;

(2) specify time periods;

(3) specify means and methods; and

(4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997;
Temporary Amendment Eff. October 2, 1999;
Amended Eff. April 1, 2014; April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03M .0201

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (c)(3), line 13, I believe the Rule reads that it is unlawful to import, buy, etc, striped bass except (1) during open striped bass season of another state and (2) the person is not in possession of a bill of lading and a state issued tag affixed to the fish. Is this correct?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03M .0201 is readopted as published in 36:07 NCR 479-480 as follows:

SECTION .0200 - STRIPED BASS

15A NCAC 03M .0201 STRIPED BASS REQUIREMENTS; GENERAL

(a) Striped bass is defined as striped bass. For the purpose of this Section, "striped bass" shall mean striped bass (Morone saxatilis) and its hybrids taken in coastal and joint fishing waters.

(b) It is unlawful to possess striped bass imported from other states that are less than 18 inches long.

(c) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except during any:

   (1) open striped bass season established for internal coastal waters;

   (2) open striped bass season established for the Atlantic Ocean;

   (3) open striped bass season of another state without possession of the following:

      (A) A bill of lading as described in 15A NCAC 03I .0114; and

      (B) A numbered, state-issued tag from the state of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.

(d) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

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

Eff. January 1, 1991;

Amended Eff. March 1, 1994; September 1, 1991;

Temporary Amendment Eff. May 1, 2000;

Amended Eff. June 1, 2013; October 1, 2008; October 1, 2004; April 1, 2001;

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03M .0202 is readopted as published in 36:07 NCR 480 as follows:

15A NCAC 03M .0202  STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) It is unlawful to possess striped bass from the Coastal Fishing Waters of the Cape Fear River and its tributaries.

(b) It is unlawful to possess striped bass from the Roanoke River Management Area, as designated in 15A NCAC 03R .0201, in a commercial fishing operation.

(c) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in internal coastal waters during the period from October 1 through April 30:

   (1) Specify fishing days and times;
   (2) Specify areas;
   (3) Specify means and methods;
   (4) Specify quantity, except possession for recreational purposes shall not exceed:
      (A) more than three fish in any one day in the Albemarle Sound Management Area, as designated in Rule 15A NCAC 03R .0201; and
      (B) more than two fish in any one day in the joint and coastal fishing waters of the Central Southern Management Area, as designated in Rule 15A NCAC 03R .0201.
   (4) Specify means and methods; and
   (5) Specify size, but the minimum size specified shall not be less than 18 inches total length.

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;

Eff. January 1, 1991;
Amended Eff. March 1, 1996; November 1, 1991;
Temporary Amendment Eff. September 1, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. June 1, 2013; July 1, 2008; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03M .0204

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Where is your statutory authority for enforcing limits established by the Atlantic States Marine Fisheries Commission? Is it G.S. 113-255?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03M .0204 is readopted as published in 36:07 NCR 480 as follows:

**15A NCAC 03M .0204  STRIPED BASS SEASON, SIZE–SIZE, AND HARVEST LIMIT: ATLANTIC OCEAN**

It is unlawful to possess striped bass taken from the Atlantic Ocean less than the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Fishery Management Plan for striped bass, Atlantic Striped Bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Fishery Management Plan.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; Temporary Amendment Eff. October 1, 1996; Amended Eff. October 1, 2008; July 1, 1998; Readopted Eff. May 1, 2022.*
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03M .0205

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Are the proclamations referenced in this Rule governed by other Rules? If so, please cross-reference.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03M .0205 is readopted as published in 36:07 NCR 480 as follows:

15A NCAC 03M .0205  STRIPED BASS; PROHIBITED TRAWLING

(a) It is **shall be** unlawful to possess striped bass on a vessel with a trawl net on that vessel in **internal coastal waters** Internal Waters except during transit from ocean fishing grounds to port during any open striped bass trawl season in the Atlantic Ocean established by proclamation. Striped bass so possessed must **shall** meet the minimum size limit set by proclamation.

(b) It is **shall be** unlawful to possess striped bass on a vessel in the Atlantic Ocean with a trawl net on that vessel except during any open striped bass trawl season in the Atlantic Ocean established by proclamation.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. December 1, 2007;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03M .0503

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   In (d), lines 28-29, what are the “related requirements” in 03O .0500?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03M .0503 is readopted as published in 36:07 NCR 480-481 as follows:

15A NCAC 03M .0503  FLOUNDER

(a) It is shall be unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.

(b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.000' N) unless each trawl has a mesh length of 5 1/2 five and one-half inches or larger diamond mesh (stretched) or 6 six inches or larger square mesh (stretched) applied throughout the body, extension(s) extensions, and the cod end (tailbag) of the net except as provided in Paragraphs (g) and (h) of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

(1) It is shall be unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the vessel vessel, or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.

(2) It is shall be unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.

(3) It is shall be unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.

(4) It is shall be unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule (1) of this Paragraph.

(d) All fish dealer transactions in flounder landed from the Atlantic Ocean must shall be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related rules requirements in 15A NCAC 03O .0500.

(e) It is shall be unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.000' N).

(g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.
(h) Flynets are exempt from the flounder trawl mesh requirements if they meet the following definition:

1. The net has large mesh in the wings that measure 8 eight inches to 64 inches;
2. The first body section (belly) of the net has 35 or more meshes that are at least 8 eight inches; and
3. The mesh decreases in size throughout the body of the net to as small as 2 two inches or smaller towards the terminus of the net.

(i) Commercial Season:

1. The North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 80 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
2. The season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
3. During any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(j) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

(k) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the flounder fishery:

1. specify time;
2. specify area;
3. specify means and methods;
4. specify season;
5. specify size;
6. specify quantity; and
7. specify means/methods; and
(6)(7) Require submission of statistical and biological data.

(1) Possession and sale of flounder by a hatchery or flounder aquaculture operation and purchase and possession of flounder from a hatchery or flounder aquaculture operation shall be exempt from season and size limit restrictions set under Paragraph (k) of this Rule. It shall be unlawful to possess, sell, purchase, or transport such flounder unless they are in compliance with all conditions of the Aquaculture Operations Operation Permit.

History Note: Authority G.S. 113-134; 113-169.5; 113-182; 113-221; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; February 1, 1992;
Temporary Amendment Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Temporary Amendment Eff. December 23, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. June 1, 1998; August 18, 1997;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. May 1, 2000; July 1, 1999;
Amended Eff. April 1, 2001; August 1, 2000;
Temporary Amendment Eff. September 1, 2004;
Temporary Amendment Expired June 12, 2005;
Amended Eff. September 1, 2005;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03N .0104 is readopted as published in 36:07 NCR 481 as follows:

**15A NCAC 03N .0104 PROHIBITED GEAR, PRIMARY NURSERY AREAS**

It is unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for clamming, or mechanical methods for oystering for the purpose of taking any marine fishes in any of the primary nursery areas described in 15A NCAC 3R 03R .0103.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Recodified from 15A NCAC 3N .0004 Eff. May 1, 1997;
Amended Eff. May 1, 1997;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
15A NCAC 03N .0105 is readopted as published in 36:07 NCR 481-482 as follows:

15A NCAC 03N .0105 PROHIBITED GEAR, SECONDARY NURSERY AREAS

(a) It is **shall be** unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 03R .0104.

(b) It is **shall be** unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 03R .0105, except that the Fisheries Director, may, by proclamation, open any or all of the special secondary nursery areas, or any portion thereof, listed designated in 15A NCAC 03R .0105 to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 03L .0100 and .0200.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. September 1, 1991; Recodified from 15A NCAC 03N .0005 Eff. May 1, 1997; Amended Eff. August 1, 2004; May 1, 1997; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
1A NCAC 03O .0101 is readopted as published in 36:07 NCR 482-485 as follows:

SUBCHAPTER 03O - LICENSES, LEASES, FRANCHISES, AND PERMITS

SECTION .0100 - LICENSES

1A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(a)(c) To obtain Division of Marine Fisheries licenses, endorsements, commercial fishing vessel registrations, and Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application: except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party, or person holding a power of attorney:

   (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized.

   (2) A statement from the licensee that the information and supporting documentation submitted with the application is true and correct.

   (3) Current and valid picture identification of the licensee or responsible party. Acceptable forms of picture identification are state driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.

   (4) Certification that the applicant does not have four or more marine or estuarine resource violations convictions during the previous three years.

   (5) Valid documentation papers or current motor boat registration, or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

   (6) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration Commercial Fishing Vessel Registration in a
corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel
master of that vessel shall also be specified. The responsible party licensee shall notify the Morehead
City Office of the Division of Marine Fisheries within five days of change of the master specified
for that vessel; changing the vessel master.

(6) a current copy of a written partnership agreement shall be provided when purchasing a license,
endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is
established.

(7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a
Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending,
a copy of the pending application and a notarized bill of sale may be submitted.

(6)(8) An affirmation of liability insurance and that the operator is knowledgeable of United States Coast
Guard (USCG) safety requirements for the vessel(s) vessels used in the operation in accordance
with G.S. 113-168.6 when purchasing a commercial fishing vessel registration Commercial Fishing
Vessel Registration with a for-hire endorsement.

(7) If a partnership is established by a written partnership agreement, a current copy of such agreement
shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration
in a partnership name;

(8) For nonresidents, certification of the state of residency;

(9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an
Ocean Fishing Pier License;

(10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of
operator(s) when purchasing a Spotter Plane License;

(11) In addition, for fish dealers licenses, the physical address of the established location where business
is conducted and, if different, the address where records are kept;

(12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the
applicant shall provide valid certification as a North Carolina certified shellfish dealer;

(13) In addition, for the Blanket For-Hire Captain's Coastal Recreational Fishing License (CRFL), the
applicant shall provide a valid certification from the USCG that allows carrying six or fewer
passengers or a certification from the USCG that allows carrying more than six passengers; and

(14) In addition, for the Blanket For-Hire Vessel CRFL or the Non-Blanket For-Hire Vessel License,
valid documentation papers or current motor boat registration or copies thereof for the vessel
engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending
application and a notarized bill of sale may be submitted.

(d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be
documented by the licensee with certification of the state of residency. Proof of residency for residents of North
Carolina shall be documented by the licensee as follows:
(1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:

(A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;

(B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or

(C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.

(2) All other types of licenses:

(A) North Carolina voter registration card;

(B) current North Carolina Driver's License;

(C) current North Carolina Certificate of Domicile;

(D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or

(E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.

(e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:

(1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.

(2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:

(A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or

(B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

(3) Fish Dealer License:

(A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and

(B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.

(4) Land or Sell License:

(A) valid documentation papers or current motor boat registration, or copy thereof; or

(B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.
The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

(5) Ocean Fishing Pier License:
   (A) the information required in G.S. 113-169.4; and
   (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.

(6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.

(7) Spotter Plane License:
   (A) the information required in G.S. 113-171.1;
   (B) the current aircraft registration; and
   (C) a list of operators.

(b)(f) For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

(1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.

(2) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
   (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
   (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
   (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.

(3) It is lawful it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean equal to than the number of vessels that he owns the person owns that individually met the eligibility requirements of Parts (b)(1)(A) (f)(2)(A) and (b)(1)(B) (f)(2)(B) of this Rule.

(4) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.

(5) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.

(6) The holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.

(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30 year.
(g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

(1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.

(2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

(3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.

(h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:

(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.

(2) Current picture identification of tournament organizer. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;

(2) Current picture identification of responsible party or master. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;

(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered, in accordance with G.S. 113-169.5.
(e) Proof of residency in North Carolina for:

(1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and

(A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;
(B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
(C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(2) All other types of licenses:

(A) North Carolina voter registration card; or
(B) Current North Carolina Driver's License; or
(C) Current North Carolina Certificate of Domicile; or
(D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
(E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party, or person holding a power of attorney:

(1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel registration.

(2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
(3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.

(4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.

(5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, or commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

(6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.

(7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. July 1, 1997; March 1, 1994;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. April 1, 2001;

Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002;

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03O .0102 is readopted as published in 36:07 NCR 485-486 as follows:

**15A NCAC 03O .0102 RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH**

**PROCEDURES AND REQUIREMENTS TO RENEW LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) It is unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.

(b) Fish to be sold under the Recreational Fishing Tournament License to Sell Fish must be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission (MFC) or provisions of proclamations issued by the Fisheries Director as authorized by the MFC.

(c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.

(a) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:

1. full name, physical address, mailing address, date of birth, and signature of the licensee.
2. a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
3. current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
4. the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.
5. the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.
6. a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.
7. certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.
The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

History Note: Authority G.S. 113-134; 113-168; 113-168.4; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2020; December 1, 2006; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0103

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), lines 7-8, please define the terms “buy vessel, run vessel, purse vessel”.

In (a), line 8, “except as specified” where?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0103 is readopted as published in 36:07 NCR 486 as follows:

**15A NCAC 03O .0103  AUXILIARY VESSELS**

(a) Buy boats, run boats, purse boats or any other vessels used in conjunction with commercial fishing operations, except vessels without motors used in connection with other vessels with commercial fishing vessel registrations, shall have a commercial fishing vessel registration. It shall be unlawful to fail to comply with Commercial Fishing Vessel Registration requirements set forth in G.S. 113-168.6 to operate a buy vessel, run vessel, purse vessel, or any other vessel used in conjunction with a commercial fishing operation, except as specified.

(b) A person in command of a vessel that is auxiliary to a vessel with a commercial fishing vessel registration, Commercial Fishing Vessel Registration with a person aboard who holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License engaged in a commercial fishing operation using a pound net, long-haul, long haul, or beach seine or purse seine is exempt from the provisions of G.S. 113-168.2 (a1).

**History Note:**

- Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-168.6; 113-169–113-182; 143B-289.52;
- Eff. January 1, 1991;
- Temporary Amendment Eff. July 1, 1999;
- Amended Eff. August 1, 2000;
It is unlawful to unload fish from a vessel in North Carolina which has been engaged in a commercial fishing operation outside State waters without possessing a valid:

1. Standard or Retired Standard Commercial Fishing Licenses; or License with applicable endorsement;
2. Menhaden License for Nonresidents Without a Standard Commercial Fishing License; or
3. Shellfish License for North Carolina Residents without a Standard Commercial Fishing License; or
4. Land or Sell License.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.4; 113-169; 113-169.5; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0105

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On lines 11-12, I am not sure I understand the reference to 03O .0101, as I don’t see anything describing the Permit and Certificate of Compliance in that Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0105 is readopted as published in 36:07 NCR 486 as follows:

15A NCAC 03O .0105 REQUIREMENTS FOR BAIT AND MUSSEL DEALERS

(a) Persons dealing in minnows, live shrimp, or both minnows and live shrimp for bait purposes, who are subject to licensing requirements under G.S. 113-169.3 are required to purchase only the license applicable to finfish dealers. A bona fide dealer in shrimp, licensed under the provisions of G.S. 113-169.3, may, however, deal in minnows as well as live shrimp for bait purposes, as an incident of his operations under his shrimp dealer’s license.

(b) Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 are shall be required to purchase only the license applicable to clam dealers and meet the shellfish dealer certification requirements in 15A NCAC 03O .0101(a)(11) shall be required to hold a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, as described in Rule .0101 of this Section.

History Note: Authority G.S. 113-134; 113-169.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2004; August 1, 2000;
Readopted Eff. May 1, 2022.
15A NCAC 03O .0107 is readopted as published in 36:07 NCR 486-487 as follows:

15A NCAC 03O .0107  LOST LICENSE REPLACEMENT AND FEES

(a) Lost licenses except Blanket Coastal Recreational Fishing Licenses, endorsements, and commercial fishing vessel registration decals may be replaced upon payment of a fee of ten dollars ($10.00) or a fee equal to the initial cost of the license, endorsement, or commercial fishing vessel registration, whichever is less. A licensee shall receive a replacement for a commercial license, endorsement, Commercial Fishing Vessel Registration decal, or Recreational Commercial Gear License upon payment to the Division of Marine Fisheries a fee of ten dollars ($10.00) or a fee equal to the initial cost of the license, endorsement, or Commercial Fishing Vessel Registration, whichever is less.

(b) The replacement fee for the Blanket Coastal Recreational Fishing Licenses is five dollars ($5.00). A licensee shall receive a replacement Coastal Recreational Fishing License or a for-hire license as defined in G.S. 113-174.3 upon payment to the Division of Marine Fisheries a fee of five dollars ($5.00).

History Note: Authority G.S. 113-134; 113-168.1; 113-168.6; 113-169.4; 113-173; 113-174.1; 113-174.2; 113-174.3; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. December 1, 2006; August 1, 2000;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0109

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In the History Note, I believe a reference to G.S. 113-135 and 113-187 may be useful with respect to various provisions of this Rule that define unlawful behavior that isn't directly made unlawful in the other statutes cited here.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0109 is readopted as published in 36:07 NCR 487 as follows:

**ASSIGNMENT OF SCFL - STANDARD COMMERCIAL FISHING LICENSE**

(a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.

(b) The Division of Marine Fisheries shall provide assignment forms to the licensee upon issuance of the Standard Commercial Fishing License. Assignment must be made on the forms provided by the Division. The forms shall be used to obtain an assignment. On the assignment form, the Standard Commercial Fishing License holder must designate what, if any, endorsements are included in the assignment. Endorsements may not be assigned independent of the Standard Commercial Fishing License. It is unlawful for the Standard Commercial Fishing License holder or the assignee to fail to submit within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:

1. The assignment form is properly completed, complete with all required information;
2. Signatures of the current license holder and the assignee are notarized;
3. The assignee has in their possession the current licensee's original actual Standard Commercial Fishing License, including applicable endorsements of the current license holder, in accordance with G.S. 113-169.2.

(c) For an extension of time for assignments, a new assignment form must be completed in accordance with Subparagraphs (b)(1) through (b)(3) of this Rule.

(d) Assignments terminate when:

1. When the date specified on the assignment form is reached;
2. If the licensee or assignee are determined ineligible for a license or assignment;
3. If the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination;
4. Upon the licensee or assignee's death; or
5. When the Standard Commercial Fishing License expires.

If the properly completed assignment form is not received by the Division within five days from the date it was signed, the assignment is null and void. For an extension of time for assignments, a new assignment form must be completed in accordance with Subparagraphs (a)(1) through (a)(3) of this Rule.

(e) It is unlawful for an individual assigned a Standard Commercial Fishing License to fail to have available ready at hand for inspection all required documents as stated under G.S. 113-168.1. The assignee, when involved in a commercial fishing operation must fail to have the original actual Standard Commercial Fishing License and
License, any assigned endorsements, and a copy of the assignment form in their possession ready at hand for inspection in accordance with G.S. 113-168.1.

(d)(f) All landings occurring during the time of the assignment shall be credited to the Standard Commercial Fishing License holder, licensee, not the assignee.

(e)(g) It is unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It is unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments may only be made by the person issued the Standard Commercial Fishing License and may not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel may not assign such licenses.

(f)(h) It is unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.

(g) Assignments submitted without complete and required information shall be deemed not in effect and shall not be considered further until resubmitted with all required information.

(h)(i) It is unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the assignor of that license within five days of notice that the assignment has been terminated or a demand by the assignor to return the license.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.3; 113-169.2; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. October 2, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03O .0110 is readopted as published in 36:07 NCR 487 as follows:

**15A NCAC 03O .0110 LICENSE REFUNDS**

All license fees are non-refundable except when licenses are issued by the Division of Marine Fisheries in error.

**History Note:** Authority G.S. 113-134; 113-163.1, 113-173, 113-182, 143B-289.52; 147-84; 1993 (Regular Session 1994), c. 576, s. 3; Eff. March 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0111

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In the History Note, please cite to the portions of the G.S. where S.L. 2010-145 was codified, if possible.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0111 is readopted as published in 36:07 NCR 488 as follows:

15A NCAC 03O .0111  SURRENDER OF LICENSES

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

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

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

History Note: Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145; Temporary Adoption Eff. July 1, 1999; Eff. August 1, 2000; Amended Eff. October 1, 2012; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY:  Marine Fisheries Commission

RULE CITATION:  15A NCAC 03O .0113

DEADLINE FOR RECEIPT:  Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   Where is your statutory authority for these reporting requirements? Is it G.S. 113-170.3?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0113 is readopted as published in 36:07 NCR 488 as follows:

**15A NCAC 03O .0113  OCEAN FISHING PIER REPORTING REQUIREMENTS**

It shall be unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license application issuance.

*History Note:  Authority G.S. 113-134; 113-169.4; 113-174.1; 113-182; 143B-289.52; Eff. April 1, 2011; Amended Eff. May 1, 2015; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0114

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), lines 6-7, where is your statutory authority to suspend or revoke licenses for violations of Chapter 14? G.S. 113-171 defines convictions as being for “criminal offense[s] within the jurisdiction of the Department under the provisions of this Subchapter (Subchapter IV of Chapter 113)....”

In (f), p.2, line 6, how is the licensee to demonstrate that he or she will “conduct the operations for which the license is sought in accordance with all applicable laws and rules”?

In (g), line 12, where is your statutory authority for this? What are the penalties associated with violation of (g)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0114 is readopted as published in 36:07 NCR 488-489 as follows:

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

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

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

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

1. for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;
2. for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
3. for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director shall revoke all licenses issued to the licensee; and
4. for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two years.

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

(e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension...
period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

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

(g) A licensee shall not willfully evade the service prescribed in this Rule.

History Note: Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-143;
Eff. October 1, 2012;
Amended Eff. May 1, 2017;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03O .0203 is readopted as published in 36:07 NCR 489 as follows:

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) Upon acceptance of a completed shellfish lease application as set forth in Rule .0202 of this Section, the proposed shellfish lease area shall be inspected by agents of the Division of Marine Fisheries. Proposed shellfish lease areas inconsistent with applicable standards contained or referenced in Rule .0201 of this Section shall result in the return of applications for amendment to remove the inconsistencies. If the boundaries of the proposed shellfish lease area are modified, the stakes identifying such areas shall be relocated accordingly by the applicant or applicants. The failure of the applicant or applicants to amend applications or modify the shellfish lease area identification, when required, within 30 days of notification shall result in denial of such applications.

(b) If the initial or amended shellfish lease application is deemed consistent with all applicable requirements, the Secretary or his designee shall notify the applicant and publish notices of intention to lease in accordance with G.S. 113-202(f).

(c) The Secretary shall consider the shellfish lease application, the Division's proposed lease area analysis, and public comments, and may in his discretion lease or decline to lease the proposed lease area or any part thereof. Special conditions may be imposed so that shellfish leases may be issued which would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the shellfish lease by the Secretary, the application shall be considered denied.

(d) Upon approval of a shellfish lease by the Secretary, the applicant or applicants shall mark the shellfish bottom lease in accordance with Rule .0204 of this Section within 30 days of approval. Water column leases in accordance with Rule .0204(a)(2), and shall within 90 days submit to the Division acceptable surveys of the areas approved for leasing except that a water column lease which entirely covers a shellfish bottom lease or franchise with an accepted survey on file does not require another survey. Such surveys shall be made at the expense of applicants and must meet the following standards:

1. Surveys and maps shall meet all the requirements of 21 NCAC 56 .1600, Standards of Practice for Land Surveying in North Carolina, which is hereby incorporated by reference including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Marine Fisheries Division, Marine Fisheries Building, 3441 Arendell St., P.O. Box 769, Morehead City, North Carolina 28557, at no cost.

2. Maps shall bear the certificate:

"I _________________________ certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision); that the error of closure as calculated by latitudes and departures is 1: _____________, that the area is ___________ acres. Witness my hand and seal this ____________ day of __________ AD _________."

____________________________
Surveyor or Engineer

(3) The phrase "other appropriate natural monuments or landmarks" in 21 NCAC 56 .1604(e)(9) shall include bridges, roads, highways, intersections, publicly maintained aids to navigation, houses and other permanent buildings, radio, telephone, TV, and water towers, docks, piers, and bulkheads; but does not include stakes marking the boundaries of adjoining leases, points of marsh, junctions of streams, or other landmarks which are particularly subject to change through natural processes, storms, or the effect of man.

(4) A written description of the survey suitable for official documents shall be provided with the survey.

(5) Locations of all corner markers in latitude and longitude shall be provided with the survey and presented in an eight digit format. The relative accuracy of the corner marker locations shall be equal to or less than two meters. Information on the method of measurement, make and model of equipment, and coordinate system used to determine the latitude and longitude shall be included.

(e) Proposed shellfish bottom lease areas remain public bottom until a lease contract has been executed by the Secretary.

(f) Proposed shellfish water column lease areas superjacent to shellfish bottom leases and recognized perpetual franchises remain public water until a lease contract has been executed by the Secretary.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. October 1, 2008; March 1, 1994; September 1, 1991;

Readopted Eff. May 1, 2022.
15A NCAC 03O .0205 is readopted as published in 36:07 NCR 489-490 as follows:

15A NCAC 03O .0205 SHELLFISH LEASE RENEWAL
(a) Lease Shellfish lease renewal applications shall be provided to lessee lease holders by the Division of Marine Fisheries as follows:

(1) For a shellfish bottom leases, lease, a renewal application shall be provided in January of the year of expiration.

(2) For a shellfish water column leases, lease, a renewal application shall be provided at least 90 days prior to the expiration date.

(b) Lease A shellfish lease renewal application shall be accompanied by management plans meeting a Shellfish Lease Management Plan that meets the requirements of 15A NCAC 03O .0202(b). Rule .0202 of this Section.

The non-refundable filing fee set forth in G.S. 113-202(j) shall accompany each renewal application for a shellfish bottom leases.

(c) A survey for renewal leases shall be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.

(c) To be eligible to renew a shellfish lease, persons holding any acres under a shellfish lease or franchise shall meet the requirements established in Rules .0201 and .0204 of this Section and 15A NCAC 03O .0503(a).

(d) When it is determined, after due notice to the lessee shellfish lease holder and after opportunity for the lessee lease holder to be heard, that the lessee lease holder has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any shellfish bottom leases. The lessee shellfish lease holder may appeal the Secretary's decision by initiating a petition for a contested case as outlined in 15A NCAC 03P .0102.under G.S. 150B-23.

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to recommend approval of renew a shellfish lease in an area closed to shellfishing by reason of pollution designated as polluted by a proclamation issued by the Fisheries Director. Excluded from this requirement are shellfish leases located in conditionally approved waters that have been temporarily closed when the conditions of the written management plan are not met as described in 15A NCAC 18A .0905. Shellfish leases partially closed due to pollution must be amended to exclude the area closed to shellfishing shellfish harvest prior to renewal. For purposes of lease renewal determinations, an area shall be considered closed to shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal except shellfish leases in areas which have been closed for more than 50 percent of the days during the final four years prior to renewal and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.

(f) If the Secretary declines to renew a shellfish lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee lease holder, may issue a renewal lease for all or part of the area previously leased to the lessee lease holder that contains conditions necessary to conform the renewal lease to the requirements of this Section for new leases.
History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 2005; May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992;
September 1, 1991;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0206

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 17, what supporting documentation is necessary?

In (b), line 21, are the contents of the form specified elsewhere in another Rule or statute? If not, please describe them here.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0206 is readopted as published in 36:07 NCR 490 as follows:

15A NCAC 03O .0206 LEASE—PROTEST—SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW

(a) Should any person object to the granting of any initial or renewal lease, he has the right to protest its issuance prior to the granting of the lease by the Secretary. The protestant may file a sworn statement of protest with the Division stating the grounds for protest. The Secretary shall notify both the prospective lessee and the protestant upon receipt of a protest, and shall conduct such investigation as he deems necessary, and shall notify both parties of the outcome of his investigation. Protestants or applicants receiving an adverse recommendation on the lease application from the Secretary may appeal this decision as outlined in G.S. 113-202(g).

(b)(a) Any member of the public shall be allowed an opportunity to comment on any shellfish lease application during the public comment period and subsequent public hearing at which the lease application is being considered by the Secretary, as set forth in G.S. 113-202.

(b) Procedures for how an applicant or a person other than the applicant who is aggrieved may proceed with a contested case based on dissatisfaction of the Secretary’s decision on a shellfish lease application are provided in G.S. 113-202(g). Additionally, a person other than the applicant who is aggrieved may submit a request for a determination of the appropriateness of a contested case hearing. The request and any supporting documentation for the basis of the aggrieved person seeking to commence a contested case shall be submitted within 30 days after the disputed decision is made to the Shellfish Cultivation Lease Review Committee and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. The request shall be submitted on a form provided by the Division.

(c) The Shellfish Lease Review Committee shall notify the aggrieved person of the date of the public meeting for the Committee to consider the request no later than seven calendar days before the date of the public meeting.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0207

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 10, what supporting documentation is required?

In (b) and (c), the Rule references a reporting form and “all required fields.” Are the contents of this form adequately described in (a)? If there are other “required fields” other than “the amounts of material planted, purchased, and harvested,” please specify what the required fields are.

In your History Note, why have you added the reference to G.S. 113-206? It doesn’t appear to touch on production reports or termination of a lease.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

(a) The owners of shellfish leases and franchises shall provide an annual production report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted, purchased, and harvested in connection with management for commercial production. Reporting forms will be provided to owners of shellfish bottom leases and recognized franchises during the period that annual notices of rent due are provided to owners of shellfish bottom leases in accordance with G.S. 113-202(j). Reporting forms will be provided to owners of water column leases prior to each annual anniversary date in accordance with Rules .0201 and .0202 of this Section. The report shall include supporting documentation with evidence of purchased seed in accordance with Rule .0201 of this Section.

(b) The Division shall provide reporting forms annually to each shellfish lease or franchise holder to be used for the annual production report.

(b)(c) Failure to furnish by the holder or holders of the shellfish lease or franchise to submit the required annual production report, correct and in detail requested, report with all required fields completed, or filing a report containing false information can constitute grounds for termination as set forth in Rule .0208 of this Section.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0208

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 24, what are you extending? Is this an extension of the ten-year lease period, or a period of forbearance on termination of the lease under G.S. 113-202?

Is there statutory authority for a hardship extension to the lease? G.S. 113-202(j) states that the initial lease shall be for 10 years, and that “Renewal leases are issued for a period of 10 years from the time of expiration of the previous lease.”

In your History Note, why have you included the references to G.S. 113-205 and 113-206?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0208 is readopted as published in 36:07 NCR 491 as follows:

15A NCAC 03O .0208 TERMINATION OF PROCEDURES FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES

(a) Procedures for termination of shellfish leaseholds, leases and franchises are provided in G.S. 113-202. An appeal of the Secretary's decision to terminate a leasehold is governed by G.S. 150B-23.

(b) Substantial breach of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes the following, except as provided in Paragraph (c) of this Rule:

1. Failure to meet shellfish production and marketing requirements for bottom leases or franchises in accordance with Rule .0201 of this Section;

2. Failure to maintain a planting effort of cullch or seed shellfish for bottom leases or franchises in accordance with Rule .0201 of this Section;

3. Failure either to meet shellfish production and marketing requirements or to maintain a planting effort of cullch or seed shellfish for water column leases in accordance with Rule .0201 of this Section;

4. The Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; and

5. The Attorney General initiates action for the purpose of vacating or annulling letters patent granted by the State, in accordance with G.S. 146-63.

(b) Consistent with G.S. 113-202(l) and G.S. 113-201(b), a leaseholder, shellfish lease or franchise holder that failed to meet the requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, Rule .0201 or the rules of this Section or this Rule that govern a determination of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director his or her or the Fisheries Director's designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the leaseholder lease or franchise holder to fail to meet lease requirements:

1. Death, illness, or incapacity of the leaseholder, shellfish lease or franchise holder or his the holder's immediate family as defined in G.S. 113-168 that prevented or will prevent the leaseholder lease or franchise holder from working the lease;

2. Damage to the shellfish lease or franchise from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;

3. Shellfish mortality caused by disease, natural predators, or parasites; or

4. Damage to the shellfish lease or franchise from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

(c) In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease or franchise number. In the case of hardship as described in Subparagraph (c)(1) of this Rule, the notice shall also
state the name of the leaseholder, shellfish lease or franchise holder, or immediate family member and either the date of death or the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also include documentation of damage to the shellfish lease or franchise. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell St., Street, P.O. Box 769, Morehead City, NC 28557.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52;

Eff. January 1, 1991;
Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. January 1, 2002; October 1, 2001;
Amended Eff. May 1, 2017; April 1, 2003;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0209

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), lines 16-18, where is your statutory authority for the requirement that the Division provide written consent to a transfer before it becomes effective and that the transfer be made only by the use of a form provided and approved by the Division? G.S. 113-202(k) states that leaseholds are treated as real property and are subject to laws relating to “sale… and the like.” Moreover, 202(k) goes on to require only that transfer is not valid until the new owner notifies the Secretary.

With respect to the form referenced in (b), are the contents completely described in (c), or would the Division require any other information/documentation?

In (d), where is your statutory authority to limit the size of a transfer or sublease?

In (f), line 31, do you need to include a reference to 113-202.1(j), which also touches on transferability (or lack thereof) of certain water column leases?

In the History Note, why have you included the references to G.S. 113-205 and 113-206?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0209 is readopted as published in 36:07 NCR 491-492 as follows:

15A NCAC 03O .0209 TRANSFER OF INTEREST—ASSIGNMENT OF SHELLFISH LEASES AND FRANCHISES

(a) For the purpose of effecting assignments of shellfish leases or franchises in accordance with this Rule:

(1) "transfer" shall be defined as any permanent assignment of a shellfish lease or franchise, in whole or in part.

(2) "sublease" shall be defined as any temporary assignment of a shellfish lease or franchise, in whole or in part.

(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 03O .0202(b).

(b) No transfer or sublease of a shellfish lease or franchise, in whole or in part, shall be valid until notice is provided to the Division of Marine Fisheries as provided in Article 16 of Chapter 113 of the North Carolina General Statutes and the Division provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of the North Carolina General Statutes and Marine Fisheries Commission Rules. A transfer may only be made by the use of a form provided and approved by the Division.

(c) Notice to transfer or sublease a shellfish lease or franchise shall include the shellfish lease or franchise number, county in which the lease or franchise is located, and the name of the transferee or sub-lessee. The transferee or sub-lessee of a shellfish lease shall provide to the Division the required Shellfish Lease Management Plan and proof of completion of training requirements in accordance with Rule .0202 of this Section.

(b)(d) If the new owner obtains a shellfish lease, the smallest portion of an existing shellfish bottom lease or franchise, it shall not contain less than one-half acre and the required notification to the Division shall be accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).

(c) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).

(c) A shellfish lease or franchise shall not be transferred or subleased to a nonresident of North Carolina in accordance with G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, and G.S. 113-206.

(d)(f) Water column leases are not transferrable except when the Secretary approves such transfer. A shellfish water column lease shall only be transferred in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).

(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2011; March 1, 1994; September 1, 1991;
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY:    Marine Fisheries Commission

RULE CITATION:  15A NCAC 03O .0210

DEADLINE FOR RECEIPT:    Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   In your History Note, why have you included the reference to G.S. 113-205?

   Also, do you need a reference to G.S. 113-202.2, given that it touches on perpetual franchises?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0210 is readopted as published in 36:07 NCR 492 as follows:

15A NCAC 03O .0210  STANDARDS AND REQUIREMENTS FOR SHELLFISH FRANCHISES

(a) The resolution of claims filed under G.S. 113-205 is governed by standards in Departmental Rules 15A NCAC 1G .0200 and .0300. Following receipt of notification that a claim has a valid chain of title, the owner shall provide to the Division within 90 days a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.

(b) Acceptable management plans, Shellfish Management Plans, prepared in accordance with the standards in 15A NCAC 03O .0202(b), Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

(c) The survey and management plan Shellfish Management Plan requirements in Paragraphs (a) and (b) of this Rule and all other requirements and conditions of this Section affecting management of franchises shall apply to all valid shellfish franchises recognized prior to September 1, 1989.

(d) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in 15A NCAC 03O .0201(e), accordance with Rules .0201 and .0207 of this Section averaged over the most recent three-year period after January 1 following the second anniversary of the dates of recognition of claims as valid shellfish franchises and continuing throughout the term of management plans Shellfish Management Plans required in Paragraph (b) of this Rule. Annual reporting of commercial production shall be submitted upon receipt of forms provided by the Division for that purpose.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; September 1, 1991;
Readopted Eff. May 1, 2022.
15A NCAC 03O .0211 is readopted as published in 36:07 NCR 492 as follows:

15A NCAC 03O .0211 PROTECTION OF PRIVATE SHELLFISH INTEREST FISHING Gear

REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

(a) It is unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for clams or oyster-shellfish on any shellfish lease or franchise except unless it has been duly authorized by the Fisheries Director as provided in 15A NCAC 3K .0206 and .0303.

(1) for a holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises;

or

(2) for the purpose of placing and retrieving cages, bags, or other aquaculture gear within any shellfish lease or franchise.

(b) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued by the Division of Marine Fisheries in compliance with 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-206; 143B-289.52;
Eff. October 1, 1992;
Amended Eff. August 1, 1998;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0301

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 6, where is your statutory authority to limit the number of licenses a person can hold?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

15A NCAC 03O .0301 ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) It is **shall be** unlawful for any individual to hold more than one Recreational Commercial Gear License.

(b) Recreational Commercial Gear Licenses shall only be issued to individuals.

History Note: Filed as a Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 113-134; 113-170.4–113-173; 113-182; 113-224–143B-289.52; Eff. February 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03O .0302 is readopted as published in 36:07 NCR 492-493 as follows:

15A NCAC 03O .0302  AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

1. One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 1/2 inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;

2. One shrimp trawl with a headrope not exceeding 26 feet in length per vessel;

3. With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;

4. One multiple hook or multiple bait trotline up to 100 feet in length;

5. Gill nets:
   (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 1/2 inches except as provided in Part (C) of this Subparagraph. Attendance is required at all times;
   (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 1/2 inches except as provided in Part (C) of this Subparagraph. Attendance is required when used from one hour after sunrise through one hour before sunset in internal coastal fishing waters Internal Waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance is required at all times in internal coastal fishing waters Internal Waters west and south of 77° 04.0000’ W.
   (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board a vessel, a maximum of 200 yards may be used from a vessel; and
   (D) It shall be unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 1/2 inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 1/2 inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board a vessel. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 1/2 inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 1/2 inches identified as recreational commercial...
fishing equipment when two or more Recreational Commercial Gear License holders are on board a vessel;

(6) A one hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;

(7) Skimmer trawls not exceeding 26 feet in total combined width; and

(8) One one pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of 1 1/2 one and one-half inches, and enclosures constructed of net mesh of 1 1/4 one and one-fourth inches or greater and with all dimensions being 36 inches or less. Attendance is shall be required at all times and all gear must shall be removed from the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.

(b) It is shall be unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) through (a)(8) of Paragraph (a) of this Rule, regardless of the number of individuals aboard on a vessel possessing a valid Recreational Commercial Gear License.

(c) It is shall be unlawful for a person an individual to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.

(d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1995;
Temporary Amendment Eff. August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2009; July 1, 2006; November 1, 2005; August 1, 2002;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0303

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5, what does it mean to possess “more than a single recreational limit”?

Don’t (a) and (b) essentially say the same thing? It seems to me they’re both saying that the amount of the limit is tied directly to the number of individuals holding a RCGL on the vessel, except as provided in (f).

In the History Note, why do you cite to G.S. 113-170.4?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03O .0303 is readopted as published in 36:07 NCR 493-494 as follows:

15A NCAC 03O .0303 POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) It is unlawful to possess more than a single recreational possession limit when only one person aboard a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as defined in 15A NCAC 03O Rule .0302(a) of this Section is used, regardless of the number of individuals on board a vessel.

(b) It is unlawful to possess individual recreational possession limits in excess of the number of individuals on board a vessel holding a valid Recreational Commercial Gear License, except as provided in Paragraph (f) of this Rule.

(c) It is unlawful for any person who holds both a Recreational Commercial Gear License and a Standard or Retired Standard Commercial Fishing License and who is in possession of identified recreational commercial fishing equipment as defined in 15A NCAC 03O Rule .0302(a) of this Section to exceed the single recreational possession limit.

(d) It is unlawful for persons collectively holding only one Recreational Commercial Gear License and any Standard Commercial Fishing License or Retired Standard Commercial Fishing License and who are in possession of any identified recreational commercial fishing equipment as defined in 15A NCAC 03O Rule .0302(a) of this Section to exceed one the single recreational possession limit.

(e) It is unlawful to possess more than 48 quarts, heads on, or 30 quarts, heads off, of shrimp when only one person aboard a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as defined in 15A NCAC 03O Rule .0302(a) of this Section is used.

(f) It is unlawful to possess more than 96 quarts, heads on, or 60 quarts, heads off, of shrimp if more than one person aboard a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as defined in 15A NCAC 03O Rule .0302(a) of this Section is used.

History Note: Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 143B-289.52;
Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1995;
Temporary Amendment Eff. June 7, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2006; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0401

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), the Rule gives the various officers named the ability to “name a designee and an alternate designee to serve” on the Eligibility Board. To be clear, only one designee from each office serves on the Board at a time, correct?

In the History Note, have the provisions of SL 1998-225 been codified in the General Statutes? If so, it would be preferable to cite to G.S. instead of a session law.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0401 is readopted as published in 36:07 NCR 494 as follows:

SECTION .0400 – STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY

15A NCAC 03O .0401  STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

(a) The Chairman of the Marine Fisheries Commission, the Secretary of the Department of Environment and Natural Resources, Environmental Quality, and the Fisheries Director of the Division of Marine Fisheries may each name a designee and an alternate designee to serve on the Standard Commercial Fishing License Eligibility Board as their representative in their absence.

(b) The Standard Commercial Fishing License Eligibility Board shall not review an application for eligibility without a quorum of the Eligibility Board members or designees being present. Two or more members of the Standard Commercial Fishing License Eligibility Board or their designees constitute a quorum.

History Note:  Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24;
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0402

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

   In (a), line 5, are the contents or substantive requirements of the application form prescribed in another Rule or statute? Is the information required by the form the same as what is required in R. 404 and 405?

   In (f), what address change is the applicant required to disclose? Home or business? Or both?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0402 is readopted with changes as published in 36:07 NCR 494 as follows:

15A NCAC 03O .0402 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS

(a) Application forms for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall be available at all offices of the Division of Marine Fisheries and online at https://deq.nc.gov/about/divisions/marine-fisheries/licenses-permits-and-leases/commercial-fishing-licenses/eligibility-pool and must be submitted to the Morehead City Office of the Division of Marine Fisheries [Division, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28552] for processing.

(b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry in the eligibility pool at any one time.

(c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing License Eligibility Pool.

(d) If an applicant has died or becomes ineligible and is subsequently selected from the eligibility pool, that license eligibility shall automatically revert to the eligibility pool.

(e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License may not apply for pool eligibility. They shall not be eligible to apply for a Standard Commercial Fishing License through the Standard Commercial Fishing License Eligibility Pool for two years from the date of the last transfer, except as provided in 15A NCAC 03O .0404(3) of this Section.

(f) Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4:24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. October 1, 2008; February 1, 2008; Readopted Eff. May 1, 2022.
15A NCAC 03O.0403 is readopted as published in 36:07 NCR 494 as follows:

15A NCAC 03O.0403 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

REVIEW

(a) After determination of eligibility by the Standard Commercial Fishing License Eligibility Board, applicants will be notified in writing as to the applicant's meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.

(b) The Marine Fisheries Commission shall determine the number of licenses available from the Standard Commercial Fishing License Eligibility Pool at their first regularly scheduled meeting following July 1 of each year.

(c) The Standard Commercial Fishing License Eligibility Board shall meet to review applications as often as deemed necessary by the Chairman of the Eligibility Board.

History Note:  Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24;
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Amended Eff. February 1, 2008;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0404

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In Item (2), lines 29 and 34, please consider revising to remove “such” in the interests of clarity.

In (2)(c), p. 1, line 36 to p. 2, line 2, what is the number of convictions that would cause suspension or revocation of the license, endorsement, etc?

In (3), p. 2, line 23, who is the responsible party? Elsewhere throughout the Rule you use “applicant.”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/4/22
15A NCAC 03O .0404 is readopted as published in 36:07 NCR 494-495 as follows:

15A NCAC 03O .0404  STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA

In determining eligibility of an applicant for the Standard Commercial Fishing License Eligibility Pool, the Standard Commercial Fishing License Eligibility Board shall apply the following criteria:

1. Involvement in Commercial Fishing:
   (a) Significant involvement in the commercial fishing industry for three of the last five years; or
   (b) Significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; or
   (c) In the case of an applicant who is under 16 years of age, significant involvement in commercial fishing for two out of the last five years with a parent, legal guardian, grandparent, or other adult; or
   (d) Significant involvement of the applicant's family in commercial fishing. For the purpose of this Sub-item, family shall include mother, father, brother, sister, brothers, sisters, spouse, children, grandparents, or legal guardian.

For the purposes of this Rule, significant involvement means "significant involvement" shall mean persons or corporations who are engaged in the actual taking of fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer or the dealer's employees who purchase fish at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of landing, those who sell or make commercial or recreational fishing gear, those who operate bait and tackle shops unless they are engaged in the actual taking of bait for sale, or those who work in fish markets or crab picking operations.

2. Compliance with Applicable Laws and Regulations:
   (a) The applicant shall not have any licenses, endorsements, or Commercial Fishing Vessel Registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; or
   (b) If selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, endorsements, or Commercial Fishing Vessel Registrations or the right to hold such issued by the Division of Marine Fisheries are suspended or revoked; or
   (c) Four convictions within the last three years or the number of convictions which would cause suspension or revocation of license, endorsement, or registration.
endorsements, or Commercial Fishing Vessel Registrations within the last three years shall result in the application being denied. An applicant for the Standard Commercial Fishing License Eligibility Pool shall provide certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years; and

(d) a record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool, the term convictions shall include but not be limited to any conviction for violation of any provision of Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such statutes, any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such statute, any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such statute, any conviction for violation of any provision of Article 7 of Chapter 143B of the North Carolina General Statutes and any rule implementing or authorized by such statute, any conviction of resist, obstruct, or delay involving a Marine Patrol Officer or Wildlife Officer, Marine Fisheries Inspector or Wildlife Protector under G.S. 14-223, and any conviction involving assaultive behavior toward a Marine Patrol Officer, Marine Fisheries Inspector or other governmental official of the Department of Environment and Natural Resources—Environmental Quality or the Wildlife Resources Commission:

Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.

(3) The responsible party shall not have transferred a Standard Commercial Fishing License granted by the Standard Commercial Fishing License Eligibility Board; and

(4) All applicants for the Standard Commercial Fishing License Eligibility Pool must meet all other statutory eligibility requirements for the Standard Commercial Fishing License.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. October 1, 2008; February 1, 2008; Readopted Eff. May 1, 2022.
15A NCAC 03O .0405 is readopted as published in 36:07 NCR 495-496 as follows:

**15A NCAC 03O .0405 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL APPLICATION DOCUMENTATION**

(a) Documentation for applications for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall include:

1. **Statements from individuals verifying the applicant’s involvement in commercial fishing or the commercial fishing industry,** which shall contain the applicant’s name, address, and telephone number, and must be notarized. The individual’s signature shall be notarized;

2. **Proof of income derived from commercial fishing or the commercial fishing industry.** Proof of this income shall be tax records;

3. **The extent to which the applicant has complied with federal and state laws, regulations, and rules relating to coastal fishing and protection of the environment.** Federal compliance will be verified by a notarized statement from the applicant that he has complied with federal laws.

(b) All documents required by this Rule must be notarized.

(c) Applications shall be legible and complete or they will be returned.

(d) It is unlawful to submit false statements on applications or supporting documents. If eligibility is based on false information provided by the applicant, this eligibility shall be automatically revoked.

**History Note:** Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
15A NCAC 03O .0406 is readopted as published in 36:07 NCR 496 as follows:

15A NCAC 03O .0406 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL CERTIFICATION

Annual certification to maintain an eligible application in the Standard Commercial Fishing License Eligibility Pool shall be as follows:

1. The applicant shall certify that the information on his original application is correct and that he desires to remain in the Standard Commercial Fishing License Eligibility Pool. A certification form shall be provided and mailed to the applicant at the last known address by the Division of Marine Fisheries;

2. A certification form shall be provided and mailed to the applicant at the last known address by the Division.

3. This certification, the certification form with any changes, such as address, phone number, or updated fisheries involvement information since the last application or certification must be notarized and submitted to the Division within 12 months of the initial application and annually thereafter; and

4. Failure to return certification that an application is correct or with changes within 30 days from when the Division mailed the form to the applicant shall result in the application being removed from the Standard Commercial Fishing License Eligibility Pool. An applicant that has been removed from the Standard Commercial Fishing License Eligibility Pool shall receive a notice from the Division.

5. An applicant that has been deleted from the Standard Commercial Fishing License Eligibility Pool shall receive a notice from the Division.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24;
Temporary Adoption Eff. April 1, 1999;
Eff. August 1, 2000;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0502

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b)(1)(C), line 13, please define “valid”.

In the History Note, I believe you need a reference to G.S. 113-170.2, with respect to (b)(1)(F), and a reference to G.S. 113-170.3, with respect to (b)(1)(I).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0502 is readopted as published in 36:07 NCR 496-497 as follows:

15A NCAC 03O .0502 PERMIT CONDITIONS; GENERAL PERMIT CONDITIONS

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

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

1. It shall be unlawful to:
   
   (1) operate under the permit except in areas, at times, and under conditions specified on the permit.
   
   (2)(A) operate under a permit without having the permit or copy thereof in possession of the permittee or his or her designees at all times of operation and the permit or copy thereof shall be ready at hand for inspection, except for a Pound Net Permit; Set Permit.
   
   (2)(B) operate under a permit without having a current valid picture identification in possession and ready at hand for inspection.
   
   (4)(D) refuse to allow inspection and sampling of a permitted activity by an agent of the Division; Division of Marine Fisheries.
   
   (5)(E) fail to provide complete and accurate information requested by the Division in connection with the permitted activity.
   
   (6)(G) hold a permit issued by the Fisheries Director when not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 03O .0501; Rule .0501 of this Section.
   
   (7)(H) fail to provide reports within the timeframe required by the specific permit conditions.
   
   (9)(J) fail to keep such records and accounts as required by the rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries.
   
   (9)(J) assign or transfer permits issued by the Fisheries Director, except for a Pound Net Permit Set Permit as authorized by 15A NCAC 03J .0504; .0504.

2. The Fisheries Director, Director or his agent, the Fisheries Director's agent may, by conditions of the permit, specify or impose any of all of the following restrictions for the permitted purposes:

   (a) species;
   
   (b) quantity or size;
   
   (c) time period;
   
   (e) location;
   
   (d) means and methods;
(f) disposition of resources;
(g) marking requirements; or
(h) harvest conditions.

(A) specify time;
(B) specify area;
(C) specify means and methods;
(D) specify requirements for a commercial fishing operation or for recreational purposes;
(E) specify record keeping and reporting requirements;
(F) specify season;
(G) specify species;
(H) specify size;
(I) specify quantity;
(J) specify disposition of resources;
(K) specify marking requirements; and
(L) specify harvest conditions.

(3) unless specifically stated as a condition on the permit, all statutes, rules, and proclamations shall apply to the permittee and his or her designee; and the permittee's designees.

(2) 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).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0504

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 6, please explain the reference to G.S. 150B-2, as I don’t see these terms used there in a way that appears relevant to this Rule.

In (b)(3), are you saying the former licensee cannot apply for reinstatement of the revoked permit while the license remains revoked, or even after reinstatement of the license?

In (d), lines 17-18, please remove the parenthetical and incorporate the parenthetical material into the body of the Rule.

In (g), p. 2, line 6, please change “it” to “he or she.”

In (j), line 14, where is your statutory authority for this? What are the penalties associated with violation of (j)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03O .0504 is readopted as published in 36:07 NCR 497-498 as follows:

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

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

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

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

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

(c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be eligible to apply for reinstatement of a revoked permit for a period of six months.

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

(1) Violation of one specific permit condition in a three-year period, permit shall be suspended for 10 days.

(2) Violation of two specific permit conditions in a three-year period, permits shall be suspended for 30 days.

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

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

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

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

(e) Permit designees shall not be permitted to participate in a permit operation during any period they are under license suspension or revocation.
(f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause
the permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is
not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation,
partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an
inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

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

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

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

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

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

History Note: Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-
145;
Temporary Adoption Eff. May 1, 2000;
Eff. April 1, 2001;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03P .0101

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), lines 12-13, please explain the reference to G.S. 150B-2, as I don't see these terms used there in a way that appears relevant to this Rule.

In (d), was it your intention to state that for permits related to endangered or threatened species, statements to show compliance shall be postmarked within 5 days of receipt of the notice? If so, please revise accordingly, because the text is unclear. Otherwise, please clarify what this paragraph is doing.

In (e), p.2, line 1, please define or delete “material”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03P .0101 is readopted as published in 36:07 NCR 498 as follows:

**SUBCHAPTER 03P - HEARING ADMINISTRATIVE PROCEDURES**

**SECTION .0100 - HEARING PROCEDURES**

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

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

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

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

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

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

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

(e) Upon receipt of a statement and any supporting documentation from the license holder permittee, the Division shall review the statement and, within 15-10 days, shall notify the license holder permittee in writing with the Division's determination whether the license holder permittee demonstrated compliance with all requirements for
retention of the license permit. In making this determination, the Division may consider criteria including material changes made enabling the license holder permittee to conduct the operations for which the license permit is held in accordance with all applicable laws and rules, and processing errors made by the Division.

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

History Note: Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23; 
Eff. January 1, 1991; 
Amended Eff. May 1, 2017; August 1, 1999; 
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03P .0102

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

It is unclear to me why you’ve added the reference to G.S. 113-182 in the History Note, as that statute doesn’t reference administrative hearings in any way. I would suggest adding references to both or either of G.S. 150B-22 and G.S. 113-131, or any other statute you are aware of that generally gives OAH jurisdiction over contested cases coming out of MFC.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03P .0102 is readopted as published in 36:07 NCR 498 as follows:

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

Administrative contested case hearings shall be held in accordance with G.S. 150B, and the administrative hearing procedures codified at 15A NCAC 1B .0200. Article 3 of Chapter 150B of the General Statutes.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1999;
Readopted Eff. May 1, 2022.
15A NCAC 03P .0201 is readopted as published in 36:07 NCR 499 as follows:

SECTION .0200 - DECLARATORY RULINGS

15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY
At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a declaratory ruling as provided in G.S. 150B-4 and rules of this Section.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.
15A NCAC 03P .0202 is readopted as published in 36:07 NCR 499-500 as follows:

**15A NCAC 03P .0202  PROCEDURE FOR REQUESTING DECLARATORY RULINGS**

(a) All requests for a declaratory ruling shall be filed in writing with the Director of the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, Department of Environment and Natural Resources (DENR), 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557.

(b) All requests shall include the following:

(1) the aggrieved person's name and address;
(2) the rule, statute, or order upon which a ruling is desired;
(3) a concise statement as to whether the request is for a ruling on:
   (A) the validity of a rule or rule;
   (B) the applicability of a rule, order or statute to a given factual situation; or
   (C) a conflict or inconsistency within the Commission or the Department of Environmental Quality regarding interpretation of a law or rule adopted by the Commission;
(4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him; the petitioner;
(5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner; and
(6) a draft of the proposed ruling; and
(7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

(b)(c) A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on the applicability of a rule, order, or statute must include a description of the statement of the specific facts to a given factual situation on which the ruling is to be based, and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the aggrieved person's reasons for questioning the validity of the rule. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask for both multiple types of declaratory rulings in a single request. A request for a ruling must include or be accompanied by:

(1) a statement of the facts proposed for adoption by the Commission; and
(2) a draft of the proposed ruling.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Commission Chair.

(e) Before deciding the merits of the request, the Commission may:
Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the
Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross-examination before
the Commission. The declaratory ruling shall be determined on the basis of the statement of facts submitted by the
parties.

(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the
Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling,
stating the reasons for the refusal to issue a ruling on the request.

(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request
for declaratory ruling on finding that:

1. the petitioner(s) and the Division cannot agree on a set of facts sufficient to support a meaningful
   ruling;
2. there has been a similar determination in a previous contested case or declaratory ruling;
3. the matter is the subject of a pending contested case hearing or litigation in any North Carolina or
   federal court; or
4. no genuine controversy exists as to the application of a statute or rule to the factual situation
   presented.

(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following
items:

1. the request for a ruling;
2. any written submissions by the parties;
3. the statement of facts on which the ruling was based;
4. any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
5. any other matter considered by the Commission in making the decision; and
6. the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons
   therefore.

(h) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by
the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the
Commission from prospectively changing a ruling.

(i) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny
the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a
denial of the merits of the request and shall be subject to judicial review.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
Eff. April 1, 1999;

Readopted Eff. May 1, 2022.
15A NCAC 03P .0203 is readopted as published in 36:07 NCR 500 as follows:

15A NCAC 03P .0203 DEFINITION DISPOSITION OF REQUESTS FOR DECLARATORY RULING

(a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for declaratory ruling based on the requirements of this Section.

(b) Before the Commission decides the merits of the request, the Commission Chair may:

(1) request additional written submissions from the petitioner;

(2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of this Paragraph; and

(3) request oral arguments from the petitioner or the petitioner's legal counsel.

(c) Unless the Division of Marine Fisheries waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The Division shall be allowed to present a written response and oral arguments to the Commission at a regularly scheduled meeting.

(d) The Commission shall make a decision to grant or deny the request in accordance with G.S. 150B-4.

(e) The Commission shall deny the request upon making any of the following findings:

(1) the request is not complete;

(2) the petitioner is not a person aggrieved;

(3) there has been a similar determination in a previous contested case or declaratory ruling;

(4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;

(5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation presented;

(6) the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;

(7) the information provided by the petitioner, the Department, or any interveners does not support a determination that a rule is invalid; or

(8) there is no material conflict or inconsistency within the Commission or Department regarding the law or rule identified by the petitioner.

(f) The Commission shall keep a record of each declaratory ruling, which shall include the following items:

(1) the request for a ruling;

(2) any written submission by a party;

(3) the statement of facts on which the ruling was based;

(4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;

(5) any other matter considered by the Commission in making the decision; and

(6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.
(g) For purposes of Rule .0202 of this Section, a declaratory ruling shall be deemed to be “in effect” until:

(1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;

(2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;

(3) until the Commission changes the declaratory ruling prospectively for good reasons;

(4) or until any court sets aside the declaratory ruling in litigation between the Commission or Department of Environment and Natural Resources Environmental Quality and the party requesting the ruling; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03P .0301

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

It is unclear to me why you’ve included the references to G.S. 113-182.1 in the History Note, as the statute does not reference petitions for rulemaking or your rulemaking authority generally.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03P .0301 is readopted as published in 36:07 NCR 500-501 as follows:

SECTION .0300 - PETITIONS FOR RULEMAKING

15A NCAC 03P .0301 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission (hereinafter referred to as the Commission) shall make his petition in a written petition addressed to the Chairman of the Marine Fisheries Commission and submitted addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Commission staff at:

Marine Fisheries Commission
Division of Marine Fisheries
PO Box 769
Morehead City, North Carolina 28557.

(b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

1. the text of the proposed rule(s);
2. the statutory authority for the agency to promulgate the rule(s);
3. a statement of the reasons for adoption of the proposed rule(s);
4. a statement of the effect on existing rules;
5. copies of any documents and data supporting the proposed rule(s);
6. a statement of the effect of the proposed rule(s) on existing practices in the area involved, including an estimate of cost factors for persons affected by the proposed rule(s);
7. a description of those most likely to be affected by the proposed rule(s); and
8. the name(s) and address(es) of the petitioner(s).

(c) The petitioner may include the following information within the request:

1. the text of the proposed rules for adoption or amendment;
2. a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing rules;
3. a statement of the effect of the requested rule changes on:
   A. existing rules;
   B. existing practices in the area involved; and
   C. those most likely to be affected by the requested rule changes; and
4. the name and address of the petitioner.

(d) The petitioner may include the following information within the request:

1. the statutory authority for the agency to promulgate the rules;
2. a statement of the cost factors for persons affected by the proposed rules;
3. a statement explaining the computation of the cost factors;
(4) a description, including the names and addresses, if known, of those most likely to be affected by
the proposed rules; and
(5) documents and data supporting the proposed rules.

(e) When petitions and supporting documents and data exceed 10 pages in length, 15 copies of the entire petition and
any attachments shall be submitted.

(d) In its review of the proposed rules, the Commission shall consider:

(1) whether it has the authority to adopt the rules;
(2) the effect of the proposed rules on existing rules, programs, and practices;
(3) probable costs and cost factors of the proposed rules; and
(4) the impact of the rules on the public and regulated entities.

(d)(e) Petitions. A petition failing to contain the required information shall be returned by the Marine Fisheries
Commission Chairman.

History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.
15A NCAC 03P .0302 is readopted as published in 36:07 NCR 501 as follows:

15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION

(a) The Marine Fisheries Commission Chairman Chair may refer duly submitted petitions complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory committee(s) committees or other advisory committee(s) committees of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) The Chairman Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition within 10 days of the assignment of the petition.

(c) At least 15 days before the Committee meeting, the Committee Chairman Chair shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) The If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Fisheries Director, through Division of Marine Fisheries staff, or their legal counsel may make a presentation to the Committee.

(e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations before the Committee.

(f) Interested At least 10 days before the Committee meeting, interested persons must request the opportunity to make a presentation to the Committee(s) Committees through the Committee(s) chair(s) Chairs of the Committees. The request shall:

   (1) state the interest of the person;
   (2) state the person=s position on the petition for rulemaking;
   (3) be accompanied by supporting materials.

The Chairman of the Committee will determine whether additional interested persons make oral presentations before the Committee.

(f) The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee before it makes a recommendation on the petition for rulemaking.

(g) During the Committee=s Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.
15A NCAC 03P .0303 is readopted as published in 36:07 NCR 501-502 as follows:

**PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION**

(a) Petitions. A complete petition for rulemaking, when deemed complete by the Marine Fisheries Commission Chairman, as set forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.

(b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition and the Committee's recommended action shall be presented through the Chair of the Committee or other designated member of the Committee during the business session of the Commission. Unless the Commission Chair rules otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the Department of Environmental Quality, the petitioner, and the petitioner's legal counsel.

(c) For a petition not referred to a Committee, the Commission Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Commission Chair may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Commission Chair. The request shall:

1. state the interest of the person;
2. state the person's position on the petition for rulemaking; and
3. be accompanied by supporting materials.

(b)(d) Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission shall:

1. grant the petition in writing, notify the petitioner in writing, and initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or
2. deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) who submitted the petition.

History Note: Authority G.S. 113-134; 113-182; 143B-289.51; 143B-289.52; 150B-20;
Eff. April 1, 1999;
Readopted Eff. May 1, 2022.
15A NCAC 03P .0304 is repealed through readoption as published in 36:07 NCR 502 as follows:

15A NCAC 03P .0304    RECOURSE TO DENIAL OF THE PETITION

History Note: Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20;
Eff. April 1, 1999;
Repealed Eff. May 1, 2022.
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03R .0110

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout, what is the “COLREG Demarcation Line”? Will your regulated public know?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03R.0110 is amended as published in 36:07 NCR 502-508 as follows:

15A NCAC 03R.0110  CRAB SPAWNING SANCTUARIES

The crab spawning sanctuaries within which the taking of crabs may be restricted or prohibited are described as follows: referenced in 15A NCAC 03L.0205 are delineated in the following coastal fishing waters:

(1) in Areas from Barden Inlet and North:

1. In the Oregon Inlet Area. Beginning Area: beginning at a point on the Atlantic Ocean shore of Bodie Island 35° 47.7054' N - 75° 32.3522' W; running northeasterly to a point in the Atlantic Ocean 35° 47.9833' N - 75° 31.8500' W; running southerly to a point in the ocean 35° 46.3500' N - 75° 30.6666' W; running westerly to a point on the Atlantic Ocean shore at 35° 46.1037' N - 75° 31.2785' W; running northerly along the Atlantic shore of Pea Island to and around South Point and continuing southerly along the shore of Pamlico Sound to a point on the south point of Eagle Nest Bay at 35° 43.7085' N - 75° 30.8009' W; running westerly to a point in Pamlico Sound at 35° 43.7100' N - 75° 32.2113' W; running northerly to a point 35° 47.3992' N - 75° 34.1650' W in Pamlico Sound; running northerly to a point on Bodie Island 35° 48.5740' N – 75° 33.8722' W; running southerly along the shore to and around North Point at Oregon Inlet and then northerly on the Atlantic shore to the point of beginning;

2. In the Hatteras Inlet Area. Beginning Area: beginning at a point on the Pamlico Sound shoreline of Hatteras Island 35° 12.0846' N – 75° 43.3514' W; running northwesterly to a point in Pamlico Sound 35° 13.6361' N – 75° 45.4451' W; running southwesterly to a point near Outer Green Island 35° 11.0794' N – 75° 48.4440' W; running southeasterly to a point on the Pamlico Sound shore of Ocracoke Island 35° 10.7004' N – 75° 47.9094' W; running northeasterly along the shoreline to a point on the northeastern tip of Ocracoke Island 35° 11.2340' N – 75° 46.3051' W; running southeasterly to a point in the Atlantic Ocean at 35° 10.6644' N – 75° 44.5221' W; running northeasterly to a point on the ocean shoreline of Hatteras Island 35° 11.7894' N – 75° 43.5946' W; 35° 11.7895' N – 75° 43.5947' W; running southwesterly around the tip of Hatteras Island to the point of beginning;

3. In the Ocracoke Inlet Area. Beginning Area: beginning at a point on Ocracoke Island 35° 06.2555' N – 75° 59.3722' W; running westerly through Shellcastle Island to a point in Pamlico Sound 35° 05.8599' N – 76° 04.3639' W; running southerly to a point on Portsmouth Island 35° 03.7378' N – 76° 04.7850' W; 35° 03.7379' N – 76° 04.7850' W; running northeasterly along the shore of Pamlico Sound around the western side of Ocracoke Inlet and southwesterly along the shore of the Atlantic Ocean to a point 35° 03.0500' N – 76° 03.0833' W; running southeasterly offshore to a point in the Atlantic Ocean 35° 02.6333' N – 76° 02.7166' W; running northeasterly to a point in the ocean 35° 03.9666' N – 75° 59.3000' W; running northwesterly to a point on the Atlantic shore of
Ocracoke Island 35° 04.7402' N – 75° 59.7124' W; running southwesterly along the shore
around the eastern side of Ocracoke Inlet and northeasterly along the shore to the point of
beginning;

(4)(d) In the Drum Inlet Area. Beginning at a point on the Core Sound shore of Core Banks 34°
52.81101' N – 76° 17.1780' W; running northwesterly to a point in Core Sound 34° 53.7347' N – 76°
18.0439' W; running southwesterly to a point in Core Sound 34° 50.8286' N – 76°
21.2515' W; running southeasterly to a point on the Core Sound shore of Core Banks 34°
50.1496' N – 76° 20.3924' W; following the shoreline in a northeasterly direction around
the western side of Drum Inlet then along the Atlantic Ocean shoreline to a point on Core
Banks 34° 50.0049' N – 76° 20.3741' W; running southeasterly to a point in the Atlantic
Ocean 34° 49.4995' N – 76° 19.8407' W; running northeasterly to a point in the Atlantic
Ocean 34° 52.2167' N – 76° 16.7476' W; running northwesterly to a point on the ocean
shore of Core Banks 34° 52.6147' N – 76° 17.0705' W; running southwesterly toward and
around the eastern side of Drum Inlet, then in a northeasterly direction along the Core
Sound shore of Core Sound to the point of beginning; Ophelia and Drum Inlet Area:
beginning at a point on the Core Sound shore of Core Banks 34° 51.7718' N – 76° 18.5093'
W; running northwesterly to a point in Core Sound 34° 52.3431' N - 76° 19.1661' W;
running southwesterly to a point near Marker "27" in Core Sound 34° 50.6411' N - 76°
22.0094' W; running southwesterly to a point in Core Sound 34° 49.1020' N - 76° 23.0288'
W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 48.6143'
N - 76° 22.3033' W; following the shoreline in a northeasterly direction around the western
side of Ophelia Inlet then along the Atlantic Ocean shoreline southwesterly to a point on
Core Banks 34° 48.9349' N - 76° 21.4582' W; extending 100 yards seaward from the
shoreline from the mean high water line and the COLREG Demarcation Line in the
Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Core
Banks 34° 51.6790' N - 76° 18.3829' W; running southwesterly along the Atlantic Ocean
shoreline toward and around the eastern side of Ophelia Inlet, then northeasterly along the
Core Sound shore of Core Banks to the point of beginning; and

(5)(e) In the Bardens Inlet Area. Beginning at a point on Core Banks near the southern side of
Hogpen Bay 34° 40.7047' N – 76° 29.6108' W; running westerly to a point near Marker "35"
at 34° 40.7021' N – 76° 31.5922' W; running southwesterly to a point on Shackleford Banks
34° 38.9974' N – 76° 32.4858' W; running southeasterly around the eastern end of
Shackleford Banks and then northerly along the ocean shoreline to a point on shore
34° 38.5608' N – 76° 32.6863' W; running southwesterly through Buoy "4" to Buoy "2" at
the end of the Cape Lookout Jetty 34° 37.1272' N – 76° 33.7381' W; running southeasterly
to the base of the Cape Lookout Jetty 34° 36.7836' N – 76° 33.1569' W; running northerly
to the end of Power Squadron Spit, around Lookout Bight and northerly up Core Banks to
the point of beginning. Barden Inlet Area: beginning at a point on the Core Sound shore of
Core Banks 34° 40.7131' N – 76° 28.9495' W; running northwesterly to a point on Harkers
Island 34° 41.0674' N – 76° 31.5834' W; running southwesterly to a point on Shackleford
Banks 34° 39.5418' N - 76° 34.0451' W; following the shoreline in southeasterly direction
around the northern side of Barden Inlet then along the Atlantic Ocean shoreline
northwesterly to a point on Shackleford Banks 34° 38.7748' N - 76° 32.8463' W; running
southwesterly to a point in the Atlantic Ocean 34° 38.2938' N - 76° 33.5130' W; running
southerly to a point near Buoy "2" at the end of the Cape Lookout Jetty in the Atlantic
Ocean 34° 37.1253' N - 76° 33.7446' W; running southeasterly to a point on Cape Lookout
34° 36.7229' N - 76° 33.0514' W; running northerly along the Atlantic Ocean shoreline
toward and around the southern side of Barden Inlet to a point on Cape Lookout 34°
36.5492' N - 76° 32.2416' W, then running northeasterly along the Core Sound shore of
Core Banks to the point of beginning.

(2) in Areas from Beaufort Inlet and West and South:

(a) Beaufort Inlet Area: beginning at a point on the Back Sound side of Shackleford Banks 34°
41.0017' N - 76° 37.7538' W; running northerly to a point on Carrot Island 34° 42.3553' N
- 76° 37.1124' W; running westerly along the shoreline to a point on Carrot Island 34°
42.6291' N - 76° 38.6608' W; running westerly to a point on Town Marsh 34° 42.6394' N -
76° 38.7442' W; running westerly along the shoreline to a point on Town Marsh 34°
42.7915' N - 76° 40.2489' W; running westerly to a point on Bird Shoal 34° 42.7694' N -
76° 40.4764' W; running northerly to a point on Pivers Island 34° 42.9294' N - 76° 40.4301'
W; running northerly along the shoreline to a point on Pivers Island 34° 43.1892' N - 76°
40.3873' W; running northerly to a point on Radio Island 34° 43.2344' N - 76° 40.4099' W;
running along the shoreline to a point on Radio Island 34° 43.2770' N - 76° 41.2422' W;
running along the south side of the Highway 70 Bridge over the Newport River to a point
near the Morehead City Port 34° 43.2419' N - 76° 41.7067' W; running southerly along the
shore to a point near the Morehead City Port 34° 42.9560' N - 76° 41.6986' W; running
southwesterly to a point on Goat Island 34° 42.7185' N - 76° 41.9145' W; running
southeasterly along the shoreline to a point on Goat Island 34° 42.2031' N - 76° 41.3923'
W; running southwesterly to a point on shore near Fort Macon State Park 34° 42.1709' N -
76° 41.3693' W; following the shoreline in a southwesterly direction around the western
shoreline of Beaufort Inlet then along the Atlantic Ocean shoreline to a point on Bogue
Banks 34° 41.6480' N - 76° 42.0986' W; extending 100 yards seaward from the shoreline
from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean
and running easterly then southeasterly and returning to shore parallel to a point on
Shackleford Banks 34° 40.6129' N - 76° 38.1521' W; running northwesterly along the
Atlantic Ocean shoreline around the eastern side of Beaufort Inlet, then running easterly
along the Back Sound shore of Shackleford Banks to the point of beginning;

(b) Bogue Inlet Area: beginning at a point on Bogue Banks 34° 39.1828' N - 77° 05.8503' W;
running northerly to a point 34° 40.1526' N - 77° 05.6346' W; running northerly to a point
34° 40.2531' N - 77° 05.6385' W; running westerly to a point 34° 40.2550' N - 77° 05.9450'
W; running southerly to a point 34° 40.1732' N - 77° 05.9616' W; running southerly to a
point 34° 39.9629' N - 77° 06.1038' W; running southerly to a point 34° 39.5209' N - 77°
06.4042; running southwesterly to a point 34° 39.0599' N - 77° 07.3287' W; running
southerly to a point on Bear Island 34° 38.3856' N - 77° 07.2373'; following the shoreline
in a northeasterly direction around the western shoreline of Bogue Inlet then along the
Atlantic Ocean shoreline to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W;

(c) Bear Inlet Area: beginning at a point on Bear Island 34° 37.7852' N - 77° 09.7128' W;
running northerly to a point 34° 37.8817' N - 77° 09.7698' W; running southwesterly to a
point 34° 37.6695' N - 77° 10.4134' W; running northwesterly to a point 34° 37.8105' N -
77° 10.5849' W; running southwesterly to a point on Saunders Island 34° 37.4531' N - 77°
11.0624' W; running southeasterly to a point on Browns Island 34° 37.2216' N - 77°
10.8461' W; following the shoreline in northeasterly direction around the western shoreline
of Bear Inlet then along the Atlantic Ocean shoreline to a point on Browns Island 34°
36.1188' N - 77° 13.0193' W; extending 100 yards seaward from the shoreline from the
mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and
running northeasterly and returning to shore parallel to a point on Bear Island 34° 37.5607'
N - 77° 09.5752' W; running southwesterly along the Atlantic Ocean shoreline around the
eastern shoreline of Bear Inlet, then northeasterly along the shore to the point of beginning;

(d) Browns Inlet Area: beginning at a point on Browns Island 34° 35.8978' N - 77° 13.8409'
W; running northerly to a point 34° 36.0015' N - 77° 13.9606' W; running westerly to
a point 34° 35.9360' N - 77° 14.1340' W; running southerly to a point 34° 35.6631' N - 77°
14.1270' W; following the shoreline in a northeasterly direction around the western
shoreline of Browns Inlet then along the Atlantic Ocean shoreline to a point 34° 33.7692'
N - 77° 16.8043' W; extending 100 yards seaward from the shoreline from the mean high
water line and the COLREG Demarcation Line in the Atlantic Ocean and running
northeasterly and returning to shore parallel to a point on Browns Island 34° 36.1188' N -
77º 13.0193' W; running southwesterly along the Atlantic Ocean shoreline around the
eastern shoreline of Browns Inlet, then northerly along the shore to the point of beginning;

(e) New River Inlet Area: beginning at a point on shore on the south side of Wards Channel
34º 32.2064' N - 77º 19.8404' W; running northwesterly to a point 34º 33.1386' N - 77º
20.8902' W; running westerly to a point 34º 33.1097' N - 77º 21.1013' W; running
southeasterly to a point 34º 32.3473' N - 77º 20.6013' W; running southwesterly to a point
on Topsail Island 34º 32.1096' N - 77º 20.8447' W; following the shore line in a southerly
direction around the western shoreline of New River Inlet then along the Atlantic Ocean
shoreline to a point 34º 31.3352' N - 77º 21.1694' W; extending 100 yards seaward from
the shoreline from the mean high water line and the COLREG Demarcation Line in the
Atlantic Ocean and running northwesterly and returning to shore parallel to a point 34º
33.7692' N - 77º 16.8043' W; running southwesterly along the Atlantic Ocean shoreline
around the eastern shoreline of New River Inlet, then northeasterly along the shore to the
point of beginning;

(f) Topsail Inlet Area: beginning at a point on Topsail Island 34º 21.9619' N - 77º 37.8381' W;
running northwesterly to a point in Topsail Sound 34º 22.1071' N - 77º 37.9944' W; running
southwesterly to a point near Marker "5" 34º 21.7185' N - 77º 38.3499' W; running
southwesterly to a point near Marker "3" 34º 21.5798' N - 77º 38.5928' W; running
southwesterly to a point near Marker "1" 34º 21.1055' N - 77º 39.1749' W; running
northwesterly to a point 34º 21.2065' N - 77º 39.6127' W; running southwesterly to a point
34º 20.7450' N - 77º 40.3682' W; running southerly to a point 34º 20.3011' N - 77º 40.3728'
W; following the shoreline in a northeasterly direction around the western shoreline of
Topsail Inlet then along the Atlantic Ocean shoreline to a point on Lea-Hutaff Island 34º
20.0228' N - 77º 40.4332' W; extending 100 yards seaward from the shoreline from the
mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and
running northeasterly and returning to shore parallel to a point on Topsail Island 34º
20.8762' N - 77º 38.9403' W; running southwesterly along the Atlantic Ocean shoreline
around the eastern shore of Topsail Inlet, then northeasterly along the Topsail Sound shore
of Topsail Island to the point of beginning;

(g) Rich Inlet Area: beginning at a point on Lea-Hutaff Island 34º 18.1292' N - 77º 42.6492'
W; running northwesterly to a point 34º 18.2851' N - 77º 42.9352' W; running
southwesterly to a point 34º 18.0190' N - 77º 43.2798' W; running southerly to a point on
Figure Eight Island 34º 17.5649' N - 77º 43.1649' W; following the shoreline in an easterly
direction around the southern shoreline of Rich Inlet then along the Atlantic Ocean
shoreline to a point on Figure Eight Island 34º 17.2243' N - 77º 43.2491' W; extending 100
yards seaward from the shoreline from the mean high water line and the COLREG
Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore
parallel to a point on Lea-Hutaff Island 34° 18.1251' N - 77° 42.4352' W; running
southerly along the Atlantic Ocean shoreline around the northern shoreline of Rich
Inlet, then northeasterly along the shore to the point of beginning:

(h) Mason Inlet Area: beginning at a point on Figure Eight Island 34° 14.9536' N - 77° 45.9567'
W; running northwesterly to a point 34° 15.0409' N - 77° 46.1766' W; running southwesterly
to a point 34° 14.8657' N - 77° 46.4044' W; running southwesterly to a point 34° 14.7256'
N - 77° 46.5348' W; running southerly to a point on Shell Island 34° 14.2036' N - 77°
46.5189' W; following the shoreline in a northeasterly direction around the southern
shoreline of Mason Inlet then along the Atlantic Ocean shoreline to a point on Shell Island
34° 14.1375' N - 77° 46.4263' W; extending 100 yards seaward from the shoreline from the
mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and
running northeasterly and returning to shore parallel to a point on Figure Eight Island 34°
14.8474' N - 77° 45.7857' W; running southwesterly along the Atlantic Ocean shoreline
around the northern shoreline of Mason Inlet, then northeasterly along the shore to the point
of beginning:

(i) Masonboro Inlet Area: beginning at a point on Wrightsville Beach 34° 11.3446' N - 77°
48.7458' W; running northwesterly to a point 34° 11.4604' N - 77° 49.0510' W; running
northwesterly to a point 34° 11.5164' N - 77° 49.2368' W; running northwesterly to a point
34° 11.5255' N - 77° 49.2652' W; running northwesterly to a point 34° 11.5700' N - 77°
49.4425' W; running southwesterly to a point 34° 11.3553' N - 77° 49.5924' W; running
easterly to a point 34° 11.3737' N - 77° 49.4628' W; running easterly to a point 34° 11.3737'
N - 77° 49.4345' W; following the shoreline southeasterly to a point 34° 11.2551' N - 77°
49.2287' W; running southerly to a point on Masonboro Island 34° 10.8451' N - 77°
49.0242' W; following the shoreline in an easterly direction around the southern shoreline
of Masonboro Inlet through a point at the base of the jetty 34° 10.8814' N - 77° 48.7074'
W; running southwesterly along the Atlantic Ocean shoreline to a point on Masonboro
Island 34° 10.5221' N - 77° 49.1658' W; extending 100 yards seaward from the shoreline
and the Atlantic Ocean side of the jetties from the mean high water line and the COLREG
Demarcation Line in the Atlantic Ocean and returning to shore parallel to a point 34°
11.5753' N - 77° 48.3061' W; running southwesterly along the Atlantic Ocean shoreline
through a point at the base of the jetty 34° 11.2076' N - 77° 48.5555' W, around the northern
shoreline of Masonboro Inlet then northeasterly along the shore to the point of beginning:

(j) Carolina Beach Inlet Area: beginning at a point on Masonboro Island 34° 04.8168' N - 77°
52.8796' W; running southerly to a point 34° 04.4997' N - 77° 53.0080' W; following the
shoreline in an easterly direction to a point 34° 04.5022' N - 77° 52.7982' W; running
easterly to a point on Pleasure Island 34° 04.5102' N - 77° 52.7340' W; following the
shoreline in an easterly direction around the southern shoreline of Carolina Beach Inlet
then along the Atlantic Ocean shoreline to a point on Pleasure Island 34° 04.3505' N - 77°
52.5048' W; extending 100 yards seaward from the mean high water line and the COLREG
Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore
parallel to a point on Masonboro Island 34° 05.2151' N - 77° 52.1472' W; running
southeasterly along the Atlantic Ocean shoreline around the northern shoreline of Carolina
Beach Inlet, then westerly along the shore to the point of beginning;

(k) Cape Fear River Inlet Area: beginning at a point on Bald Head Island 33° 52.7072' N - 78°
00.0449' W; running northeasterly to a point 33° 53.6135' N - 77° 59.2549' W; running
northerly to a point 33° 54.4086' N - 77° 59.0330' W; running northerly to a point 33°
54.8399'N - 77° 58.9115' W; running westerly to a point at Southport 33° 54.9503' N - 78°
01.3581' W; running southerly to a point on Fort Caswell 33° 53.7948' N - 78° 01.0782' W;
following the shoreline in a southerly direction around the western shoreline of Cape Fear
River Inlet then westerly along the Atlantic Ocean shoreline to a point on Caswell Beach
33° 53.4293' N - 78° 01.7604' W; extending 100 yards seaward from the mean high water
line and the COLREG Demarcation Line in the Atlantic Ocean and running southerly to
point near Buoy "12" 33° 51.8213' N - 78° 01.0179' W; running southeasterly to a point 33°
51.1999' N - 78° 00.0632' W; running northeasterly to a point on Bald Head Island 33°
51.3488' N - 77° 59.9222' W; running northwesterly along the Atlantic Ocean shoreline
around the eastern shore of Cape Fear River Inlet, then northeasterly along the shore to the
point of beginning;

(l) Lockwoods Folly Inlet Area: beginning at a point on Oak Island 33° 54.9392' N - 78°
13.6711' W; running northerly to a point on Sheep Island 33° 55.0837' N - 78° 13.6753' W;
following the shoreline northwesterly to a point on Sheep Island 33° 55.2263' N - 78°
13.9395' W; running westerly to a point on Holden Beach 33° 55.1794' N - 78° 14.3132' W;
following the shoreline in a southwesterly direction around the western shore of
Lockwoods Folly Inlet then along the Atlantic Ocean shoreline to a point on Holden Beach
33° 54.8695' N - 78° 14.6180' W; running southerly to a point in the Atlantic Ocean 33°
54.6076'N - 78° 14.6026' W; running easterly to a point in the Atlantic Ocean 33° 54.5564'
N - 78 14.0529' W; running northerly to a point on Oak Island 33° 54.8853' N - 78° 14.0041'
W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of
Lockwoods Folly Inlet, then easterly along the shore to the point of beginning;

(m) Shallotte Inlet Area: beginning at a point near Monks Island 33° 54.5773' N - 78° 22.8077'
W; running southwesterly to a point on Ocean Isle Beach 33° 54.2436' N - 78° 23.2758' W;
following the shoreline in a southerly direction around the western shore of Shallotte Inlet
then along the Atlantic Ocean shoreline to a point on Ocean Isle Beach 33° 53.8151' N -
78° 23.7753' W; extending 100 yards seaward from the mean high water line and the
COLREG Demarcation Line in the Atlantic Ocean and running easterly and returning to
shore parallel to a point on Big Beach 33° 54.1103' N - 78° 21.9540' W; running westerly
along the Atlantic Ocean shoreline around the eastern shore of Shallotte Inlet, then
northerly along the shore to the point of beginning; and

(n) Tubbs Inlet Area; beginning at a point on the Jinks Creek shore of Ocean Isle Beach 33°
52.5844' N - 78° 28.6583' W; running northerly to a point 33° 52.7734' N - 78° 28.7428' W;
running southwesterly to a point 33° 52.6815' N - 78° 29.0080' W; running southwesterly
to a point on the Eastern Channel shore of Sunset Beach 33° 52.3878' N - 78° 29.1301' W;
following the shoreline in an easterly direction around the western shore of Tubbs Inlet
then along the Atlantic Ocean shoreline to a point on Sunset Beach 33° 52.3250' N - 78°
29.1865' W; extending 100 yards seaward of the mean high water line and the COLREG
Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore
parallel to a point on Ocean Isle Beach 33° 52.5676' N - 78° 28.4027' W; running
southwesterly along the Atlantic Ocean shoreline around the eastern shore of Tubbs Inlet
then in a northerly direction along the shore to the point of beginning.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Recodified from 15A NCAC 03R .0010 Eff. December 17, 1996;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
2018;
Amended Eff. (Pending legislative review of 15A NCAC 03L .0205).
15A NCAC 03R 0111 is amended as published in 36:07 NCR 508 as follows:

**15A NCAC 03R 0111**  **PURSE SEINES PROHIBITED**

The areas referenced in 15A NCAC 03J 0105(b)(1) are delineated in the following coastal fishing waters of the Atlantic Ocean:

(a)(1) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean within an area bounded by a line extending from a point near the Bald Head Lighthouse (33° 52.3500' N - 78° 00.3000' W) - 33° 52.3500' N - 78° 00.3000' W; running southwesterly to a point near the Cape Fear River ship channel buoy "9" (33° 51.5500' N - 78° 01.5500' W), then 33° 51.5500' N - 78° 01.5500' W; running northwesterly to a point near the foot of the Yaupon Beach Fishing Pier on Oak Island (33° 54.2000' N - 78° 01.5500' W); following the shoreline easterly to a point near Fort Caswell (33° 53.2166' N - 78° 01.1833' W); running southeasterly back to the point of origin beginning;

(b)(2) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean from May 1 through September 30:

(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 1.5 nautical miles to a point offshore 36° 13.8536' N - 75° 44.3814' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2225' W; running westerly to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 42.2416' W; and

(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 1.5 nautical miles to a point offshore 36° 03.3187' N - 75° 38.8029' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore of the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 29.2379' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W; and

(c)(3) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the Atlantic Ocean from October 1 through December 31:

(1)(a) In that in the area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 0.5 nautical miles to a point offshore 36° 13.8536' N - 75° 45.6977' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point 0.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 43.5514' W; running westerly 0.5
nautical miles to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2416' W; and

(2)(b) In that in the area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 0.5 nautical miles to a point offshore 36° 03.3187' N - 75° 40.2033' W; running southerly parallel to and 0.5 nautical mile miles off the ocean beach to a point offshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 30.6134' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 1993;
Recodified from 15A NCAC 03R .0011 Eff. December 17, 1996;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. (Pending legislative review of 15A NCAC 03J .0105).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03R .0118

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In general, I've noticed in other Rules establishing management areas for other species (see, for example, 03K .0103 for shellfish management areas), there is language defining the purpose of the management area. Is there similar language for crab harvest management areas? Is it 03L .0201? If so, I still don't see any “purpose” type language.

On line 5, why is the reference to 03J .0301 deleted? 03J .0301 was amended in this package, but the reference there to 03R .0118 remains.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 03R .0118 is amended as published in 36:07 NCR 508-509 as follows:

15A NCAC 03R .0118 EXEMPTED CRAB POT ESCAPE RING AREAS CRAB HARVEST MANAGEMENT AREAS

The areas referenced in 15A NCAC 03J .0301(g), 03L .0201(a) and (b) are delineated in the following coastal fishing waters:

(1) Pamlico Sound - within the area described by a line beginning at a point 35° 43.7457' N - 75° 30.7014' W on the south shore of Eagles Nest Bay on Pea Island; running westerly to a point 35° 42.9500' N - 75° 34.1500' W; running southerly to a point 35° 39.3500' N - 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N - 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N - 75° 31.5825' W on Gull Island; running southwesterly to a point 35° 22.8671' N - 75° 33.5851' W in Avon Channel near Beacon "1AV"; running southwesterly to a point 35° 18.9603' N - 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point 35° 16.7588' N - 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35° 14.0337' N - 75° 45.9643' W southwest of Oliver Reef near the quick-flashing beacon; running westerly to a point 35° 09.3650' N - 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35° 08.4523' N - 76° 02.6651' W in Nine Foot Shool Channel near Beacon "9"; running westerly to a point 35° 07.1000' N - 76° 06.9000' W; running southwesterly to a point 35° 01.4985' N - 76° 11.4353' W near Beacon "HL"; running southwesterly to a point 35° 00.2728' N - 76° 12.1903' W near Beacon "ICS"; running southerly to a point 34° 59.5027' N - 76° 12.3204' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running southwesterly to a point 34° 59.3610' N - 76° 12.6040' W on Wainwright Island; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks; running easterly and northerly along the shoreline across the inlets following the COLREGS Demarcation line up the Outer Banks to the point of beginning.

Northern Region: All Coastal Fishing Waters of the state north and east of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/Virginia state line.

(2) Newport River, from April 1 through June 15—within the area described by a line beginning at a point 34° 49.5080' N - 76° 41.4440' W; running westerly along the south side of the Highway 101 Bridge over Core Creek to a point on the west shore 34° 49.5260' N - 76° 41.5130' W; running along the shoreline of Newport River and its tributaries to a point 34° 49.3050' N - 76° 44.2350' W; running westerly along the south side of the Highway 101 Bridge over Harlowe Canal to a point on the west shore 34° 49.2980' N - 76° 44.2610' W; running along the shoreline of Newport River and its tributaries to a point 34° 45.2478' N - 76° 46.4479' W; running southerly along the Inland Coastal Waters boundary line to a point 34° 45.1840' N - 76° 46.4488' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.2520' N - 76° 41.6840' W; running easterly along
the north side of the Highway 70 Bridge over Newport River to a point 34° 43.2840' N - 76° 41.2200' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.3530' N - 76° 40.2080' W; running easterly across Gallant Channel to a point 34° 43.3521' N - 76° 40.0871' W; running along the shoreline of Newport River and its tributaries back to the point of beginning. Southern Region: All Coastal Fishing Waters of the State south and west of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/South Carolina state line.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. April 1, 2014; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. (Pending legislative review of 15A NCAC 03L.0201).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0135

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 8, are the contents of the application form described in another Rule or in a statute, as required by G.S. 150B-19(6)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 18A .0135 is readopted as published in 36:07 NCR 509-510 as follows:

15A NCAC 18A .0135 PERMITS

(a) No person shall 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.

(c) Application for a permit shall be submitted in writing on an application form available from the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.

(d) 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.

(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.

(i) A permit may be revoked or suspended pursuant to G.S. 130A-23 in accordance with 15A NCAC 03O .0504.

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).
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0302

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (e), line 19, are the contents of the application form described in another Rule or in a statute, as required by G.S. 150B-19(6)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.
15A NCAC 18A .0302 is readopted as published in 36:07 NCR 510 as follows:

15A NCAC 18A .0302 PERMITS

(a) No person shall 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 facilities;
(2) Repacking plants;
(2)(3) Shellstock plants; and
(3)(4) Shucking and packing plants.

(b) No person shall 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. Application forms are available from the 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 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. All permits shall expire on April 30 of each year.

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

(i) Plans and specifications for proposed new construction or remodeling, 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.

(j) A permit may be revoked or suspended pursuant to G.S. 130A-23 in accordance with 15A NCAC 03O .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 repealed through readoption as published in 36:07 NCR 510 as follows:

15A NCAC 18A .0303  RELAYING PERMITS

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 repealed through readoption as published in 36:07 NCR 511 as follows:

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

_History Note:_ Authority G.S. 130A-230;  
_Eff. February 1, 1987;_  
_Amended Eff. September 1, 1990;_  
_Repealed Eff. May 1, 2022._
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0425

DEADLINE FOR RECEIPT: Thursday, April 14, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(3), lines 13-14, I think it would be clearer if the item was structured in an itemized list, such as:

(3) the harvest date;
(A) if depurated . . . ;
(B) if wet stored . . . ;

If you're unwilling to make that change, please delete the comma on line 14 between “date” and “and”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 4/5/22
15A NCAC 18A .0425 is readopted as published in 36:07 NCR 511 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, 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. 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, and certification number assigned by the appropriate shellfish control agency;
(2) the original shipper's certification number;
(3) the harvest 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;
(7) the following statement shall appear statements in bold, capitalized type font:
   (A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS;"
   (B) "RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) ";
(8) the following statement, or equivalent:
   "Consumer Advisory
   Eating raw oysters, 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."


(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, 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 repealed through readoption as published in 36:07 NCR 511 as follows:

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

*History Note:* Authority G.S. 130A-230;

*Eff. June 1, 1989;*

*Repealed Eff. May 1, 2022.*