

Fiscal Impacts of Proposed Rule Changes to 15A NCAC 03J .0301 POTS and 15A NCAC 03I .0122 USER CONFLICT RESOLUTION

Name of Commission: N.C. Marine Fisheries Commission

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Impact Summary: *De minimis* rule change
State government: No
Local government: No
Federal government: No
Substantial impact: No

Authority: G.S. 113-133 (Abolition of Local Coastal Fishing Laws); 113-134 (Rules); 113-181 (Duties and Powers of Department); 113-182 (Regulation of Fishing and Fisheries); 113-221.1 (Proclamations; Emergency Review); 143B-289.52 (Marine Fisheries Commission – Powers and Duties)

Necessity: The current user conflict rule in 15 NCAC 03J .0301(j) arose in the context of conflict involving crab pots and has been located in the pots section of that subchapter of the N.C. Administrative Code since it was originally adopted. In practice, the rule is now being used for a variety of user conflicts, involving several different types of gears. Division staff is concerned that the location of the user conflict rule in a section on pots is not the most logical or visible place for the public to locate general information related to user conflicts. The continuing need to use 15A NCAC 03J .0301(j) to address all types of user conflicts validates the relocation of this paragraph of the rule to the General Rules subchapter for improved rule clarity.

I. Summary

Recent use of the rule addressing user conflict resolution 15A NCAC 03J .0301(j) for a user conflict that did not involve the use of pots has revealed the need to move this paragraph of the rule from the section dealing with pots, dredges, and other fishing devices to the General Rules subchapter of the N.C. Marine Fisheries Commission rules for improved clarity and improved access by the public. The proposed rule changes do not have an anticipated quantifiable cost or benefit. Rule changes are anticipated to become effective April 1, 2015.

II. Introduction and Purpose of Rule Changes

Managing conflicts between users of public trust resources is a part of managing the resource. The N.C. Department of Environment and Natural Resources is charged with administering the governing statutes and adopting rules in a manner to reconcile as equitably as possible the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and nonrenewable resources and also the interests of the many whose approach is recreational (G.S. 113-133). The department (G.S. 113-181) and the N.C. Marine Fisheries Commission (G.S. 143B-289.52) are also charged with regulating placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservational standpoint. Additionally, the inclusion of information on user conflicts is considered necessary for the management of commercially and recreationally important marine or estuarine species of fisheries in the state, and the department is required to provide that information in its fishery management plans (G.S. 113-182.1). As the N.C. Division of Marine Fisheries (NCDMF) is primarily responsible for management of marine and estuarine resources, both in the department and as staff to the commission, the division is the agency primarily responsible for carrying out these mandates concerning fishing activities in coastal fishing waters.

Perhaps the most persistent and ubiquitous gear involved in user conflict issues is crab pots. The N.C. Blue Crab Fishery Management Plan states that crab pot landings have been recorded in North Carolina since 1952 and efforts to resolve user conflicts concerning crab pots have been in place since 1955. The unusually high effort in the crab pot fishery coupled with increases in coastal residency and boat ownership contributed to many conflicts between user groups. These factors led to the delegation of proclamation authority from the N.C. Marine Fisheries Commission to the Fisheries Director to address user conflict issues as a management strategy contained in the N.C. Blue Crab Fishery Management Plan. The regulation was added to the section of the N.C. Administrative Code designated for pots, dredges, and other fishing devices, effective Aug. 1, 2000. Use of this proclamation authority provides a much faster mechanism for implementing measures to alleviate user conflicts. As a result, 15A NCAC 03J .0301 was amended effective Sept. 1, 2005 to make the wording more generic so it could be used to address non-crab pot types of user conflicts. This rule continues to be used today to address user conflicts stemming from the use of multiple types of gear.

As the rule is actually being used for a variety of user conflicts, clarity will be better served by moving the user conflict part of the rule to the General Rules subchapter. User conflicts in general and user conflicts between fishermen and adjacent landowners in particular appear to be increasing. Relatively recent episodes in Carteret County indicate that these fisherman-landowner conflicts may become more frequent. The requirements and procedures set out in the user conflict rule and the Marine Fisheries Commission Mediation Standard Operating Procedure provide specific guidance for careful and deliberate handling of these conflicts. These requirements and procedures are designed to manage disputes in a way that achieves lasting resolution amenable to all parties. The overall goal is to promote cooperation and understanding among user groups, and strengthen North Carolina's commitment to maintaining user diversity and public access to fishing opportunities and fisheries resources. Use of the proposed adopted user

conflict rule including the mediation policy will be the first priority for resolving user conflicts and should be readily accessible to the public.

Additionally, part of the proposed rule change regarding proclamation authority has been put forth as part of an ongoing attempt to standardize rule language granting proclamation authority across North Carolina Marine Fisheries Commission (NCMFC) rules. NCDMF staff has identified that proclamation authority across several rules is often similar in nature; however, the specific rule language stating the proclamation authority often differs greatly from rule to rule. In an attempt to improve consistency across rules and public clarity of proclamation authority, NCDMF seeks to standardize rule language describing proclamation authority when possible. The rule change is not intended to alter the scope of the proclamation authority, nor is it being proposed with the intention of changing current management.

III. Costs

There are no expected costs associated with the proposed rule changes. These changes are being sought to improve clarity to the public of the location and intended use of rules related to user conflict resolution.

IV. Benefits

While there are no quantifiable economic benefits to the proposed rule changes, the public is expected to benefit from changes, as the rules related to user conflict resolution will be more easily recognized and clearly stated, especially for conflicts not involving pots.

Appendix 1: Proposed Amendments

15A NCAC 03I .0122 USER CONFLICTS

(a) In order to address user conflicts, the Fisheries Director may, by proclamation, impose any or all of the following restrictions:

- (1) specify time;
- (2) specify areas;
- (3) specify means and methods;
- (4) specify seasons; and
- (5) specify quantity.

This authority may be used based on the Fisheries Director's own findings or on the basis of a valid request in accordance with Paragraph (b) of this Rule. The Fisheries Director shall hold a public meeting in the area of the user conflict prior to issuance of a proclamation based on his or her own findings.

(b) Request for user conflict resolution:

- (1) Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, NC 28557-0769. Such requests shall contain the following information:
 - (A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;
 - (B) identification of the user conflict causing a need for user conflict resolution;
 - (C) recommended solution for resolving user conflict; and
 - (D) name and address of the person(s) requesting user conflict resolution.
- (2) Within 90 days of the receipt of the information required in Subparagraph (b)(1) of this Rule, the Fisheries Director shall review the information and determine if user conflict resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny the request. If user conflict resolution is necessary, the Fisheries Director or designee shall hold a public meeting in the area of the user conflict. The requestor shall present his or her request at the public meeting. Other parties affected may participate at the discretion of the Fisheries Director.
- (3) Following the public meeting as described in Subparagraph (b)(2), the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval a proclamation to the Marine Fisheries Commission that addresses the conflict.
- (4) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the

next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

Authority G. S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52

NOTE: CHANGES TO 15A NCAC 03J .0301 INCLUDE BOTH CHANGES FOR USER CONFLICT ISSUES AND CHANGES TO THE MANAGEMENT OF AMERICAN EEL WHICH IS COVERED IN A SEPARATE ANALYSIS.

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 Waters from December 1 through May 31, except that all pots shall be removed from ~~internal waters~~ Internal Waters from January 15 through February 7. Fish pots upstream of 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.
- (2) From June 1 through November 30, north and east of the Highway 58 Bridge at Emerald Isle:
 - (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 or designate the areas described in 15A NCAC 03R .0107(b); or any part thereof, for the use of pots.
- (3) 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.

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 which 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 shall always be identified on the attached

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buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall 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 is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

(f) It is unlawful to use ~~eel-pots to take eels~~ with mesh ~~sizes-lengths~~ smaller than ~~one inch by one-half inch unless such pots contain 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 ~~size-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, ~~except that not more than two eel-pots per fishing operation with a mesh of any size may be used to take eels for bait; pots are allowed.~~

(g) It is unlawful to use crab pots in ~~coastal fishing waters~~ Coastal Fishing Waters unless each pot contains no less than two unobstructed escape rings that are at least two and five-sixteenths 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.

(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 areas;~~
- ~~(2) specify time periods; and~~
- ~~(3) specify means and methods.~~
- (1) specify time;
- (2) specify areas;
- (3) specify means and methods;
- (4) specify seasons; and
- (5) 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) User Conflicts:~~

- ~~(1) In order to address user conflicts, the Fisheries Director may by proclamation impose any or all of the following restrictions:~~
- ~~(A) specify areas;~~
 - ~~(B) specify time periods; and~~
 - ~~(C) specify means and methods.~~
- ~~The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.~~
- ~~(2) Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769. Such requests shall contain the following information:~~
- ~~(A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;~~
 - ~~(B) identification of the user conflict causing a need for user conflict resolution;~~
 - ~~(C) recommended solution for resolving user conflict; and~~
 - ~~(D) name and address of the person(s) requesting user conflict resolution.~~
- ~~(3) Upon the requestor's demonstration of a user conflict to the Fisheries Director and within 90 days of the receipt of the information required in Subparagraph (k)(2) of this Rule, the Fisheries Director shall issue a public notice of intent to address a user conflict. A public meeting shall be held in the area of the user conflict. The requestor shall present his or her request at the public meeting, and other parties affected may participate.~~
- ~~(4) The Fisheries Director shall deny the request or submit a proclamation that addresses the results of the public meeting to the Marine Fisheries Commission for their approval.~~
- ~~(5) Proclamations issued under Subparagraph (k)(1) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 03R .0107 as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Subparagraph (k)(1) of this Rule.~~

~~(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 is not a pot.

Authority G. S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52