FISCAL NOTE FOR PROPOSED AMENDMENTS TO RULE 15A NCAC 03O .0503

SPINY DOGFISH DEALER PERMIT

Rule Amendments: 15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: Catherine Blum, Rule Making Coordinator
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Impact Summary: State Government: Yes
Local Government: No
Private Impact: Yes
Substantial Impact: No

Authority: N.C.G.S. 113-169.1 (Permits for gear, equipment, and other specialized activities authorized); 15A NCAC 03O .0503 (Permit Conditions; Specific)

Necessity: The proposed rule changes relocate a 2003 requirement of a permit for dealers transacting in spiny dogfish from proclamation into rule. This rule change is being requested in accordance with the North Carolina Division of Marine Fisheries (NCDMF) policy that recommends moving long-standing proclamations into rule where feasible to aid in the clarity of regulations for the public.

I. Summary

The requirement for licensed seafood dealers participating in the quota-managed spiny dogfish fishery to hold a spiny dogfish dealer permit has been issued by proclamation since its inception in 2003. It is the only dealer permit for quota monitoring purposes that is currently not in rule. Proposed rule changes relocate the requirement of a permit for dealers transacting in spiny dogfish from proclamation into rule. This action is consistent with the NCDMF’s policy that recommends moving long-standing proclamations into rule where feasible to aid in the clarity of regulations for the public. The proposed effective date of the rule changes is May 1, 2017.

II. Introduction and Purpose of Rule Change

Several fish species are managed under federal or state commercial quotas that require frequent monitoring in order to limit harvest to amounts dictated in the allocated quota. One basic requirement of any quota monitoring program is to identify the population of those required to report so that reporting compliance can be assessed. For this reason, the division has developed rules for dealer permits for four fish species (summer flounder, black sea bass North of Cape Hatteras, striped bass, and river herring).
It has been standard practice within the division to require dealer permits first by proclamation and later move these requirements into rule once the process stabilizes and is reoccurring without change. If the NCDMF realizes that more frequent monitoring of any of the quota-managed fisheries currently not monitored is required, the division will likely begin by first requiring a dealer quota-monitoring permit by proclamation.

The division has, by proclamation, required a dealer permit and daily reporting of landings for spiny dogfish since November 2003 (Proclamation FF-42-2003.) The division has a policy which recommends moving long-standing proclamations into rule where feasible to aid in the clarity of regulations for the public. The proposed rule changes are consistent with this policy. Proclamations are public notices issued under the authority of rule that provide management flexibility to address variable conditions of certain fisheries. NCDMF now proposes to move the spiny dogfish dealer permit requirement into permanent rule because NCDMF has determined that the need to monitor the species will continue indefinitely. Seasonal openings, as well as trip limits will continue to be implemented via proclamation due to the variable nature of these conditions within the spiny dogfish fishery.

III. Costs

Placing the spiny dogfish dealer permit requirement into rule has no material impact on permit-holders as the permit is free and has been required and enforced via proclamation since 2003. Nevertheless, when moving a requirement from proclamation into rule, a cost analysis must be performed with the baseline being that the permit requirement does not occur until the rule goes into place. As such, both spiny dogfish dealer permit-holders and the NCDMF will incur opportunity costs due to time required to meet the permit’s daily reporting requirements (regardless of landings or not) during the open season and monitoring of commercial landings to ensure that the commercial quota allocated to North Carolina is accurately tracked.

Based on NCDMF permit records, there were 33 holders of the commercial spiny dogfish dealer permit in FY 2015. The spiny dogfish season typically lasts approximately six months (26 weeks or 182 days). The permit holders report landings to the NCDMF Marine Biologist I on a daily basis during the open season. Even if the permit holder received no landings on a particular day, they must report zero landings for that day. Based on the expertise of the Marine Biologist I that has been working at the NCDMF with quota management for over 15 years, the NCDMF estimates that each permit-holder spends approximately five to 10 minutes per day satisfying the reporting requirements for this specific permit, depending on the number of vessels landing spiny dogfish at the dealer and the number of pounds landed. This accumulates to 15.2-30.4 hours per permit-holder or 500.5-1,001 hours for all permit-holders over the season. Based on the Bureau of Labor Statistics 2014 mean hourly wage for farming, fishing, and forestry workers of $13.57 per hour and benefits equivalent to approximately 33.6% of total compensation, the estimated total opportunity cost stemming from the permit reporting requirements is a range from $9,074-$18,148 each year for all permit-holders. Since most permit-holders are self-employed, this total is a high estimate based on those business owners receiving a lower level of benefits than workers in this industry that are not self-employed. Additionally, based on the expertise of the Marine Biologist

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I, it is estimated that one NCDMF Marine Biologist I spends approximately 135 hours per season collecting and monitoring spiny dogfish landings from permit-holders. This total is based on one hour per work day (five days per week) for 26 weeks (130 hours), plus five additional hours per year for verification of data with the National Oceanic and Atmospheric Administration Fisheries. Assuming the midpoint wage of a Marine Biologist I with benefits included of $32.69 per hour, it is estimated that the opportunity cost of the spiny dogfish dealer permit to NCDMF is approximately $4,413 per year. The total opportunity cost for the spiny dogfish dealer permit requirement for both permit-holders and NCDMF combined is a range from $13,487-$22,561 annually.

The spiny dogfish fishery is a high volume fishery due to the low price per pound fishermen receive (approximately $0.10/pound). Accordingly, reporting requirements apply only to large-volume harvests. There is no incentive for fishermen to harvest spiny dogfish for personal use or in small quantities for sale and the proposed rule change will not affect fishermen’s harvesting behavior. Limiting reporting requirements to large-volume harvests is sufficient for the accurate monitoring and management of the species.

IV. Benefits

The rule change aids in the tracking and reporting of commercial landings in the spiny dogfish fishery in North Carolina. This tracking allows managers to monitor compliance with federal spiny dogfish quotas and prevents landing over the quota, which would require reduced landings in future years to offset any overages. Avoiding landing over the quota contributes to a healthy and sustainable spiny dogfish population. Complying with the annual quota set forth by the Atlantic States Marine Fisheries Commission enables North Carolina to participate in the spiny dogfish fishery. The commercial landings value for spiny dogfish was $302,248 in 2013; $566,615 in 2014; and $553,926 in 2015, yielding an average of $474,263 annually. By placing the requirement for dealers to hold and comply with the Spiny Dogfish Dealer Permit, commercial fishermen can land spiny dogfish in North Carolina, creating approximately $500,000 of benefits annually to the state.

Also, approximately four of the 33 dealers who held a permit in 2015 participated in the spiny dogfish research set-aside of up to 500 pounds per day (which still counts toward the quota). The fish can be sold to research companies who in turn sell the specimens to universities for use by students training to become biologists. Spiny dogfish specimens are robust enough to withstand the process of being preserved for this purpose. This adds a qualitative benefit to the rule change by allowing for harvest of spiny dogfish for research purposes; however, since there is no requirement for dealers to report for what amount these fish are sold, no quantitative values are available.

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4 Division of Marine Fisheries data, retrieved from http://portal.ncdenr.org/web/mf/statistics/comstat/dogfishSP
Finally, the rule changes aid in the clarity of fishing regulations to the public by moving a long-standing proclamation into rule.

V. Economic Impact Summary

Proposed rule changes pertaining to spiny dogfish dealer permits are expected to have a combined annual cost and benefit of $518,024. This will not meet the impact threshold of $1 million in aggregate costs and benefits to be considered rule changes with a substantial economic impact. The proposed rule changes will generate net benefits of $418,976 annually.

Table 1: Aggregate and Net Economic Impact Summary

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<th>Costs</th>
<th>Annual Impact</th>
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<tr>
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<tr>
<td>Private Sector</td>
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<table>
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<tr>
<th>Benefits</th>
<th>Annual Impact</th>
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<tr>
<td>Private Sector</td>
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<thead>
<tr>
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<td>$ 481,976 +R +C*</td>
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* R and C represent the unquantified benefit of the value of spiny dogfish harvested for research and the unquantified benefit of improving the clarity of regulations for the public.
Appendix: Proposed Amendments

15A NCAC 03O .0503  PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

(1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.

(2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

(3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at http://www.asmfc.org/fisheries-management/program-overview and at the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557 at no cost.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

(1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:

(A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit, but shall maintain a log furnished by the Division;

(B) submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;

(C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;

(D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and

(E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

(A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:

(i) Atlantic Ocean;

(ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and

(iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.

(B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the following area without first obtaining an
Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03R .0202.

(4) Atlantic Ocean Flounder Dealer Permit:
   (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
   (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(5) Black Sea Bass North of Cape Hatteras Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321’ N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.

(6) Spiny Dogfish Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.

c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
   (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000’ N latitude) to Rich’s Inlet (34° 17.6000’ N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
   (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in the area described in Subparagraph (d)(1) of this Rule when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
   (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
   (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
   (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR Code of Federal Regulations (CFR) 223.206. This federal rule is incorporated by reference including subsequent amendments and editions. Copies of this rule are available via the Code of Federal Regulations posted on the Internet at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost. 50 CFR 223.206 (2002) is hereby incorporated by reference. A copy of the reference materials can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=9088932317c242b91d6a87a47b6bda54&mc=true&tpl=/ecfrbrowse/Title50/50tab_02.tpl, free of charge. A copy of the CFR in effect on the date of this rule can be found at http://portal.ncdenr.org/web/mf/rules-and-regulations, free of charge.

e) Pound Net Set Permits. Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.

(f) Aquaculture Operations/Collection Permits:
   (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
   (2) It is unlawful:
      (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
      (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
(C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.

(4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.

(5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Activity Permit:

(1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.

(2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational purposes and for collection methods and possession allowances approved by the Division of Marine Fisheries.

(3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.

(4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit a report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.

(5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:

(A) the required license(s) for such sale;
(B) authorization stated on the permit for such sale; and
(C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.

(6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.

(7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

(1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.

(2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).

(3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:

(A) the application process;
(B) permit criteria;
(C) basic oyster biology and culture techniques;
(D) shellfish harvest area closures due to pollution;
(E) safe handling practices;
(F) permit conditions; and
(G) permit revocation criteria.

(4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

(i) Atlantic Ocean Striped Bass Commercial Gear Permit:

(1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
(2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.

(j) Coastal Recreational Fishing License Exemption Permit:

(1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.

(2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:

(A) individuals with physical or mental limitations;
(B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
(C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
(D) disadvantaged youths.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.

(3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time, and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.

(4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:

(A) the name, date(s), time, and physical location of the event;
(B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
(C) the cost or requirements, if any, for an individual to participate in the event; and
(D) an estimate of the number of participants.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52