

Regulatory Impact Analysis of Proposed Rule 15A NCAC 03O. 0108

Modifications to Standard Commercial Fishing License Transfers

Rule Amendments: 15A NCAC 03O .0108

Name of Commission: N.C. Marine Fisheries Commission

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Impact Summary: State government: Yes
Local government: No
Federal government: No
Substantial impact: No

Authority: G.S. 113-168 Definitions
G.S. 113-168.2 Standard Commercial Fishing License
15A NCAC 03O. 0400 Standard Commercial License Eligibility

Necessity: Over the past couple of years, concern has been raised by the Marine Fisheries Commission (MFC) about the types of license transfers allowed by statute and MFC rule. The current statute governing Standard Commercial Fishing License (SCFL) license transfers (113-168.2) allows transfers under very specific conditions and does not include transfers for licenses held by businesses. Excluding business entities from participating in a license transfer could ultimately result in those entities being removed from the commercial fishery. As a result, the license transfer rule (15A NCAC 03O .0108; Appendix I) was evaluated and several changes to the rule were requested by the MFC to allow more flexibility to transfer a license while ensuring clarity in the rule to avoid potential loopholes.

The anticipated effective date of the proposed rule changes is May 1, 2020.

I. Summary

Over the past couple of years, concerns have been raised by the MFC regarding the license transfer process. The statute authorizing license transfers (G.S. 113-168.2; Appendix II) only recognizes five circumstances as a legal basis for completion of a SCFL transfer. However, the statute delegates to the MFC the authority to establish in rule additional circumstances under which a transfer is allowed. The five conditions defined in statute that allow for a SCFL transfer do not allow for a transfer of a license owned by a business. Excluding business entities from participating in a license transfer could ultimately result in those entities being removed from the commercial fishery in the event a transfer is needed to facilitate their business needs. As a result, the license transfer rule (15A NCAC 03O .0108; Appendix I) was evaluated and several changes to the rule were requested by the MFC. The

primary goal of the rule change is to allow more flexibility to transfer a license to ensure license holders are not unintentionally removed from the commercial fishing industry while ensuring clarity in the rule to avoid potential loopholes.

The proposed amendments to this rule add language that would allow for additional scenarios under which a transfer of a SCFL would be authorized such as those to and/or from a business entity. This rule change would also allow the transfer of a SCFL between individual business owners and their businesses in the event a business is created, sold, or dissolved. Related changes include expanding the requirements of certification forms used by the division to confirm the person being transferred the license is eligible and the addition of family members recognized in the SCFL Eligibility Criteria rule (15A NCAC 03O .0404; Appendix III) that are not part of the “immediate family” definition defined in G.S. 113-168 (Appendix II).

II. Introduction and Purpose of Rule Changes

The SCFL is the main commercial fishing license issued in North Carolina. This license allows fishermen to participate in commercial fishing in state waters and allows them to sell their catch to licensed seafood dealers. This license is available to individuals and businesses. Individuals age 65 or older are eligible for a Retired Standard Commercial Fishing License at a reduced fee. Fees for both types of licenses are set in statute. For the remainder of this document, the term “SCFL” will refer to both Standard and Retired Standard Commercial Fishing Licenses. A SCFL can be transferred to another individual in the event of the death or retirement of a license holder or can be transferred to a member of the license owner’s immediate family at any time. There is no limit on the number of times a single license can be transferred, and the license must be active to be eligible for transfer. An active license is one that is not expired and is not suspended or revoked because of fisheries violations. Over the last 10 years, there are on average 6,600 SCFLs issued per year and around 475 transfers of this license type are completed annually.

In 1999, a cap was set on the number of SCFLs that could be issued resulting in only three ways to obtain a SCFL after that date:

1. Renew a SCFL already owned.
2. Apply through the eligibility board for a new license.
3. Receive a license transferred to you from another SCFL holder.

Due to the limited opportunities to obtain a SCFL, many license holders who do not actively use their license continue to renew it every year to avoid losing it, otherwise resulting in the license reverting back to the eligibility pool. The eligibility board was established by the Fisheries Reform Act of 1997 (S.L. 1997-400; 1998-225) to provide a mechanism for new fishermen to obtain a SCFL without having owned one in the past. The process and criteria used by the board to determine if an applicant is eligible for a license is outlined in rule (15A NCAC 03O .0400). Typically, the board meets twice a year to review applications received and grant licenses to qualified applicants. On average, there are about 60 licenses issued from the eligibility pool per fiscal year.

Over time, the complexities of business practices within the commercial fishing industry introduced additional scenarios that would require a transfer and brought to light the broader needs of businesses to transfer licenses and to codify those transactions in rule as authorized by statute. Concerns were brought forward by the MFC regarding the possibility of introducing loopholes in the transfer process and some transfers not meeting the requirements set out in the statute (G.S. 113-168.2; Appendix II).

The statute only recognizes five circumstances as a legal basis for completion of a SCFL transfer. However, the statute delegates to the MFC the authority to establish in rule additional circumstances under which a transfer is allowed. The five conditions defined in statute that would allow for a SCFL transfer have limitations and do not meet the needs of some license holders.

One of those limitations includes not allowing for a transfer of a license owned by a business. Excluding business entities from participating in a license transfer could result in those entities being removed from the commercial fishery in the event a transfer is needed to facilitate their business needs. The most common way to transfer a license is to an immediate family member as defined in G.S. 113-168 (Appendix II). The statute defining immediate family does not include grandparents, grandchildren, and legal guardians but these family members are included in the SCFL Eligibility Criteria rule (15A NCAC 03O .0404; Appendix III), which would allow them to obtain a license through the eligibility pool. Due to these limitations and inconsistencies, members of the MFC requested several amendments to the SCFL transfer rule to define additional circumstances that would allow a SCFL transfer to be processed. The proposed amendments will provide more flexibility to ensure license holders are not unintentionally removed from the commercial fishing industry while ensuring clarity in the rule to avoid potential loopholes. The proposed amendments achieve the following:

1. Additional family members will be added to the immediate family definition to allow grandparents, grandchildren, and legal guardians to be eligible for a SCFL or Retired SCFL transfer since they are recognized in the SCFL eligibility criteria rule.
2. The rule will confirm the presence of a certification statement from the transferee that affirms the information provided to the division is true and accurate, which is already required for any transfer but not explicitly stated in rule.
3. An individual holding a SCFL or Retired SCFL may transfer their license to a business in which the license holder is also an owner.
4. If a business is dissolved, the business may transfer the license or licenses of the business to an individual owner of the dissolved business contingent upon a notarized statement showing agreement of all owners of the business for the transfer.
5. If a business is sold, the business may transfer the license or licenses of the business to the successor business at the time of sale.
6. If an owner leaves a business, a license originally owned by that owner may be transferred back to that owner in an individual capacity at the time the owner leaves the business contingent upon a notarized statement showing agreement of all owners of the business for the transfer.
7. Only corporations and limited liability companies will qualify for these types of transfers. The proposed rule amendments address these types of businesses where assets are shared.
8. The term "owner" will include shareholder of a corporation and member of a limited liability company.

These rule amendments provide additional opportunities to transfer a SCFL. Specific requirements are outlined regarding business transfers to avoid ambiguity. There are nearly 200 businesses that hold SCFLs in North Carolina, the majority of which are corporations or limited liability companies. The assets of these business types are typically shared across multiple owners and allow for a separation of assets and risk from owners as an individual. The proposed amendments provide guidance for transferring between individual business owners and their businesses in the event a business is created, sold, or dissolved. Without these amendments, there is the potential for a business

or business owner to be removed from the commercial fishing industry if their business becomes dissolved and they cannot renew the license held under their business name.

III. Benefits

License owners will benefit from the proposed rule amendments by being able to transfer their license under additional circumstances that are not included in the current statute but are authorized by the statute to be added to rule. This extra flexibility will prevent the loss of a license held under a business name and reduce the administrative burden on license holders that, for example, wish to transfer their license to a grandchild in the event their children are not interested in commercial fishing.

In Fiscal Year 2018, there were 179 businesses that held a SCFL. In the event any of these businesses are dissolved, the owner will be able to transfer their license under the proposed rule changes into their individual name and continue fishing under that commercial license. Under the current statute and rule, if a business dissolves, the owner is not able to renew any license held in the inactive business's name or transfer it to their individual name, which would result in the owner losing that commercial fishing license. If a license cannot be renewed, it is returned to the eligibility pool and the owner would have to submit an application to the eligibility board to obtain a new license. Depending on the timing of eligibility board meetings and when the company is dissolved, this could cause the owner to be removed from the commercial fishing industry for months while waiting to be approved for another license. If the owner does not meet the eligibility criteria they may not get another license granted to them, which would remove them from the commercial fishing industry all together. Allowing an individual to transfer their personal SCFL into their business name provides additional benefits to the license holder by allowing them to add their licenses to their business tax deductions as property needed or used to operate the business. The number of businesses that may take advantage of the transfers outlined in the proposed rule changes or how many would be removed from commercial fishing in the event the proposed rule changes do not become effective cannot be predicted; therefore, the benefit to the license holder cannot be quantified.

Each transfer is accompanied by a \$10.00 replacement fee. The rule amendments discussed above allow for the potential for an increase in SCFL transfers in the future, resulting in a small increase in revenue collected by the division. It is not possible to anticipate the number of license holders that will opt to transfer their license in the future; therefore, the number of new transfers that may occur per fiscal year cannot be quantified. In Fiscal Year 2018, there were 6,164 SCFLs and Retired SCFLs issued and a total of 460 transfers of this license type occurred. Although highly unlikely, if the number of transfers increased by 50%, this would result in an additional 230 transfers per fiscal year and an additional \$2,130 in revenue to the division per year.

IV. Costs

The cost to transfer a license is \$10.00, resulting in a nominal cost to the license holder wishing to engage in the additional transfer opportunities outlined in the proposed rule. There are no other anticipated costs associated with the proposed rule changes, as any additional transfers that occur can be accommodated using existing division software, staff, and transfer procedures. Administrative forms may need to be updated, but this does not result in any measurable cost to the agency. This would be absorbed into opportunity costs already included as part of normal job duties. Ensuring license transfers are processed according to statute and rule is handled administratively within the License and Statistics Section and does not impact Marine Patrol staff; therefore, there is no impact on enforcement.

Appendix I Proposed Rule Changes:

**15A NCAC 03O .0108 LICENSE AND COMMERCIAL FISHING VESSEL
REGISTRATION TRANSFERS**

(a) To transfer a license or Commercial Fishing Vessel Registration, the license or registration cannot be expired prior to transfer.

(b) Upon transfer of a license or Commercial Fishing Vessel Registration, the transferee becomes the licensee and assumes the privileges of holding the license or Commercial Fishing Vessel Registration.

(c) A transfer application including a certification statement form shall be provided by the Division of Marine Fisheries. A transfer application shall be completed for each transfer including, but not limited to:

- (1) the information required as set forth in Paragraph (a) of Rule .0101 of this Section;
- (2) a certified statement from the transferee listing any violations involving marine and estuarine resources in the State of North Carolina during the previous three years; and
- (3) a certified statement from the transferee that the information and supporting documentation submitted with the transfer application is true and correct, and that the transferee acknowledges that it is unlawful for a person to accept transfer of a license for which they are ineligible.

(d) A properly completed transfer application shall be returned to an office of the Division by mail or in person, except as set forth in Paragraph (e) of this Rule.

(e) A transfer application submitted to the Division without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(a)(f) Licenses-A License to Land Flounder from the Atlantic Ocean ~~may~~ shall only be transferred:

- (1) with the transfer of the ownership of a vessel that the licensee owns that individually met the eligibility requirements of ~~15A NCAC 3O .0101 (b) (1) (A) and (b) (1) (B)~~ Sub-Part (b)(1)(A) and (b)(1)(B) of Rule .0101 of this Section to the new owner of that vessel. ~~Transfer of the License to Land Flounder from the Atlantic Ocean transfers all flounder landings from the Atlantic Ocean associated with that vessel; or~~
- (2) by the owner of a vessel to another vessel under the same ownership.

Transfer of a License to Land Flounder from the Atlantic Ocean transfers with it all flounder landings from the Atlantic Ocean associated with that vessel. Any transfer of license under this Paragraph ~~may~~ shall only be processed through the Division of Marine Fisheries Morehead City Headquarters Office and no transfer is effective until approved and processed by the Division.

(b)(g) ~~Transfer of a Commercial Fishing Vessel Registration Transfer. Registration: When if~~ transferring ownership of a vessel bearing a current ~~commercial fishing vessel registration,~~ Commercial Fishing Vessel Registration, the new ~~owner~~ owner;

- (1) shall follow the requirements in ~~15A NCAC 03O .0101~~ Rule .0101 of this Section and pay a replacement fee of ~~ten dollars (\$10.00)~~ as set forth in Rule .0107 of this Section for a replacement ~~commercial fishing vessel registration.~~ Commercial Fishing Vessel Registration; and
- (2) ~~The new owner must~~ shall submit a transfer form application provided by the Division with the signatures of the former ~~licensee~~ owner and the signature of the new licensee owner notarized.

~~(e)(h)~~ Transfer of a Standard or Retired Standard Commercial Fishing License transfers License:

~~(1)~~ It is unlawful for a person to accept transfer of a Standard or Retired Standard Commercial Fishing License for which they are ineligible.

~~(4)(2)~~ A Standard or Retired Standard Commercial Fishing License ~~may~~ shall only be transferred if both the transferor and the transferee have no current suspensions or revocations of any Marine Fisheries license privileges. In the event of the death of the transferor, this requirement shall only apply to the transferee.

~~(3)~~ For purposes of effecting transfers under this Paragraph:

~~(A)~~ in addition to those family members defined in 113-168(3a), "immediate family" shall mean grandparents, grandchildren, and legal guardians of an individual;

~~(B)~~ "business" shall mean corporations and limited liability companies that have been registered with the Secretary of State; and

~~(C)~~ "owner" shall mean owner, shareholder, or manager of a business.

~~(2)(4)~~ At the time of the transfer of a Standard or Retired Standard Commercial Fishing License, the transferor ~~must~~ shall indicate the retainment or transfer of the landings history associated with that Standard or Retired Standard Commercial Fishing License. The transferor may retain a landings history only if the transferor holds an additional Standard or Retired Standard Commercial Fishing License. Transfer of a landings history is all or none.

~~(3)(5)~~ To transfer a Standard or Retired Standard Commercial Fishing License, the following information is required:

~~(A)~~ information on the transferee as set ~~out forth~~ in 15A NCAC 03O .0101; Rule .0101 of this Section;

~~(B)~~ notarization of the ~~current license holder's transferor's~~ and the transferee's signatures on a ~~the transfer form provided by the Division;~~ application; and

~~(C)~~ when the transferee is a non-resident, a written certified statement from the applicant listing any violations involving marine and estuarine resources during the previous three years;

~~(D)(C)~~ when ~~if~~ the transferor is retiring from commercial fishing, the transferor ~~must~~ submit evidence showing that such retirement has in fact occurred, ~~for example, which may include, but is not limited to,~~ evidence of the transfer of all ~~licensee's~~ the transferor's Standard Commercial Fishing Licenses, sale of all the ~~licensee's~~ transferor's registered vessels, or discontinuation of any active involvement in commercial fishing.

Properly completed transfer forms must be returned to Division Offices by mail or in person.

~~(4)(6)~~ The Standard or Retired Standard Commercial Fishing License ~~which~~ that is being transferred ~~must~~ shall be surrendered to the Division at the time of the transfer application.

~~(5)(7)~~ Fees:

~~(A)~~ Transferee ~~The transferee must~~ shall pay a replacement fee of ~~ten dollars (\$10.00)~~ as set forth in Rule .0107 of this Section.

~~(B)~~ Transferee ~~The transferee must~~ shall pay the differences in fees as specified in G.S. 113-168.2 ~~(e)~~ 113-168.2(e) or G.S. 113-168.3 ~~(b)~~ 113-168.3(b) when ~~if~~ the transferee ~~who is a non-resident is being transferred a resident Standard or Retired Standard Commercial Fishing License.~~ non-resident.

- (C) ~~Transferee~~ ~~The transferee must shall~~ pay the differences in fees as specified in G.S. ~~113-168.2 (e)~~ 113-168.2(e) ~~when if~~ the license to be transferred is a Retired Standard Commercial Fishing License and the transferee is less than 65 years old.
- (8) Transfer of Standard or Retired Standard Commercial Fishing License for a Business:
- (A) An individual holding a Standard or Retired Standard Commercial Fishing License may transfer their license to a business in which the license holder is also an owner of the business in accordance with application requirements as set for in Sub-Paragraph (a) of Rule .0101 of this Section.
- (B) If a business is dissolved, the business may transfer the license or licenses of the business to an individual owner of the dissolved business. A dissolved business holding multiple licenses may transfer one license or multiple licenses to one owner or multiple owners or any combination thereof. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
- (C) If a business is sold, the business may transfer the license or licenses of the business to the successor business at the time of sale.
- (D) If an owner leaves the business, any license originally owned by that owner may be transferred back to themselves as an individual at the time the owner leaves the corporation. A notarized statement showing agreement for the transfer of all owners of the business is required to complete this transaction.
- (6)(9) Transfer of Standard or Retired Standard Commercial Fishing License for a Deceased Licensee:
- (A) ~~When the deceased licensee's~~ If an immediate surviving family member(s) member of the deceased licensee is eligible to hold the deceased's ~~deceased licensee's~~ Standard Commercial Fishing License or Retired Standard Commercial Fishing License, the Administrator/Executor must give written notification within six months after the Administrator/Executor qualifies under G. S. G.S. 28A to the Morehead City Office of the Division of Marine Fisheries of the request to transfer the deceased's license to the estate Administrator/Executor.
- (B) A transfer to the Administrator/Executor shall be made according to the provisions of ~~Subparagraphs (e) (2) (e) (4)~~ Sub-Paragraphs (h)(2)-(h)(4) of this Rule. The Administrator/Executor must provide a copy of the deceased licensee's death certificate, a copy of the certificate of ~~administration~~ administration, and a list of eligible immediate family members to the ~~Morehead City Office of the Division of Marine Fisheries~~ Division.
- (C) The Administrator/Executor ~~may shall~~ only transfer a license in the Administrator/Executor name on behalf of the estate to ~~a an~~ eligible surviving family member. The surviving family member transferee ~~may shall~~ only transfer the license to a third party purchaser of the deceased licensee's fishing vessel. Transfers shall be made according to the provisions of ~~Subparagraphs (e) 2 (e) (4)~~ Sub-Paragraphs (h)(2)-(h)(4) of this Rule.
- (d) ~~Transfer forms submitted without complete and required information shall be deemed incomplete and will not be considered further until resubmitted with all required information.~~
- (e) ~~It is unlawful for a person to accept transfer of a Standard or Retired Standard Commercial Fishing License for which they are ineligible.~~

*History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.3; 113-168.6; 113-182;
143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. May 1, 2020.*

Appendix II Current General Statutes:

§ 113-168. Definitions.

As used in this Article:

- (1) "Commercial fishing operation" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used, (ii) the taking of fish under a RCGL, or (iii) the taking of fish as provided in G.S. 113-261.
- (2) "Commission" means the Marine Fisheries Commission.
- (3) "Division" means the Division of Marine Fisheries in the Department of Environmental Quality.
- (3a) "Immediate family" means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.
- (4) "License year" means the period beginning 1 July of a year and ending on 30 June of the following year.
- (5) "North Carolina resident" means a person who is a resident within the meaning of G.S. 113-130(4).
- (6) "RCGL" means Recreational Commercial Gear License.
- (7) "RSCFL" means Retired Standard Commercial Fishing License.
- (8) "SCFL" means Standard Commercial Fishing License. (1997-400, s. 5.1; 1997-443, s. 11A.119(b); 1998-225, s. 4.9; 2001-213, s. 2; 2004-187, s. 6; 2015-241, s. 14.30(u).)

§ 113-168.2. Standard Commercial Fishing License.

(a) Requirement. - Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL is not required to hold a SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5.

(a1) Use of Vessels. - The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, or beach seine operation. A person who works as a member of the crew of a vessel engaged in a mechanical shellfish operation under the direction of a person who holds a valid SCFL with a shellfish endorsement is not required to hold a shellfish license.

(b) through (d) Repealed by Session Laws 1998-225, s. 4.11, effective July 1, 1999.

(e) Fees. - The annual SCFL fee for a resident of this State shall be four hundred dollars (\$400.00). The annual SCFL fee for a person who is not a resident of this State shall be the amount charged to a resident of this State in the nonresident's state. In no event, however, may the fee be less than four hundred dollars (\$400.00). For purposes of this subsection, a "resident of this State" is a person who is a resident within the meaning of:

- (1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or
- (2) G.S. 113-130(4)e.

(f) Assignment. - The holder of a SCFL may assign the SCFL to any individual who is eligible to hold a SCFL under this Article. It is unlawful for the holder of an SCFL to assign a shellfish endorsement of an SCFL to any individual who is not a resident of this State. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name, mailing address, physical or residence address, and the duration of the assignment. If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five days of the date of the assignment, the assignment shall expire. It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment shall terminate:

- (1) Upon written notification by the assignor to the assignee and the Division that the assignment has been terminated.
- (2) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.
- (3) If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.
- (4) If the assignee becomes ineligible to hold a license under this Article.
- (5) Upon the death of the assignee.
- (6) If the Division suspends or revokes the assigned SCFL.
- (7) At the end of the license year.

(g) Transfer. - A SCFL may be transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:

- (1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.
- (2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL under this subdivision may, for the benefit of the estate of the deceased licensee:
 - a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.
 - b. Assign the SCFL as provided in subsection (f) of this section.
 - c. Renew the SCFL as provided in G.S. 113-168.1.
- (3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.
- (4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.
- (5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.

(h) Identification as Commercial Fisherman. - The receipt of a current and valid SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. - The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction. (1997-400, s. 5.1; 1998-225, s. 4.11; 2001-213, s. 2; 2013-360, s. 14.8(b); 2013-384, s. 2(c); 2014-100, s. 14.9(b).)

Appendix III Current Rules:

15A NCAC 030 .0404 ELIGIBILITY CRITERIA

In determining eligibility of an application for the Standard Commercial Fishing License Eligibility Pool, the 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, spouse, children, grandparents or legal guardian.

For the purposes of this Rule, significant involvement means 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 purchases 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 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 within the last three years shall result in the application being denied; or
 - (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 statutes; 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 statutes; any conviction of resist, obstruct, or delay involving a Marine Patrol Officer or Wildlife Officer under G.S. 14-223; and any conviction involving assaultive behavior toward a Marine Patrol Officer or other governmental official of the Department of Environment and Natural Resources or the Wildlife 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 Eligibility Board.
- (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; 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.