

**Fiscal Impact Analysis for Readoption of 15A NCAC 03Q .0100
Pursuant to N.C.G.S. § 150B-21.3A**

Rule Amendments: 15A NCAC 03Q .0101-.0109

Name of Commission: N.C. Marine Fisheries Commission

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

Authority:

North Carolina General Statutes

N.C.G.S. § 113-128.	Definitions relating to agencies and their powers.
N.C.G.S. § 113-129.	Definitions related to resources.
N.C.G.S. § 113-132.	Jurisdiction of fisheries agencies.
N.C.G.S. § 113-134.	Rules.
N.C.G.S. § 113-174.1.	License required; general provisions governing licenses.
N.C.G.S. § 113-182.	Regulation of fishing and fisheries.
N.C.G.S. § 113-292.	Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species.
N.C.G.S. § 143B-289.52.	Marine Fisheries Commission - powers and duties.
N.C.G.S. § 150B-21.3A.	Periodic review and expiration of existing rules.

I. Necessity:

N.C. General Statute § 150B-21.3A requires State agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. In 2020, the Marine Fisheries Commission (MFC) proposed the rules in 15A NCAC 03Q .0100 for readoption without substantive change pursuant to this requirement. The deadline for readoption of these rules is June 30, 2022. In consideration of public comments received during the rulemaking process, the agency proposed changes to the rules and gave final approval to readopt the amended rules Sept. 9, 2021. To demonstrate substantial compliance with N.C.G.S. § 150B-21.2(g), the agency is publishing the text of the rules as readopted and accepting comments pursuant to N.C.G.S. § 150B-21.2(f).

II. Summary

The nine rules in 15A NCAC 03Q .0100 (Appendix I) have been reviewed to conform to the requirements of N.C.G.S. § 150B-21.3A and authorizing statutes and also to address public comment received during the rulemaking process. None of the proposed readoptions contain amendments that produce procedural changes, and therefore no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements. In short, all proposed changes are either intended to provide heightened clarity to rule language or to conform rule language to authorizing statutes, fishery management plans (FMPs), and ongoing management practices.

In short, each agency interprets differently who manages which species in joint fishing waters. Therefore, the primary focus of the MFC in readopting the rules in 03Q .0100 is to conform the rules to the authorizing statutes that are in force today and clarify which agency has authority to manage which species, consistent with current management practices for the agencies and regulated stakeholders. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

III. Introduction and Purpose of Rule Changes

The purpose of the MFC is to manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in N.C.G.S. § 113-132, including commercial and recreational fisheries resources (Chapter 143B, Article 7, Part 5D). Session Law 1965-957 amended Subchapter IV of Chapter 113 of the General Statutes of North Carolina to create N.C.G.S. § 113-132, Jurisdiction of fisheries agencies. This was done in part to clarify the conservation laws of the State and the authority and jurisdiction of what are now the MFC and the WRC. Paragraph (e) of this statute states the "Marine Fisheries Commission and the Wildlife Resources Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters."

In accordance with N.C.G.S. § 113-132, the nine rules in 15A NCAC 03Q .0100, subtitled "Jurisdiction of Agencies: Classification of Waters" were originally adopted jointly by the MFC and the WRC. As a result, both agencies must approve re adoption of the rules.

Staff from the DMF and the WRC first met about these joint rules in July 2018, but after two years, various efforts had failed to yield a set of joint rules on which the two agencies could agree. To ensure it would meet its statutory obligation to re adopt its rules before the deadline, the MFC approved Notice of Text for Rulemaking for the nine rules in 15A NCAC 03Q .0100 at its August 2020 business meeting for re adoption without change. The proposed rules were published in the *N.C. Register* Oct. 1, 2020. The MFC accepted public comments from Oct. 1 through Nov. 30, 2020 and received one written public comment from the WRC (Appendix II). No other public comments were submitted. In consideration of the public comments received during the rulemaking process, the MFC proposed changes to the rules. Specifically, proposed changes conformed the rules to authorizing statutes, removed text that merely repeated the

content of laws or rules, updated a list of species to match current management practices by both agencies, used defined terms consistently, and clarified existing text. The MFC placed final re-adoption of the rules on the agenda for its August 2021 quarterly business meeting. At the WRC's request, the MFC delayed the vote on final re-adoption to allow additional input from the WRC. This resulted in additional edits to the nine joint rules. The MFC gave final approval of the revised joint rules at a special meeting held Sept. 9, 2021.

Summary of Pertinent Authorizing Statutes

There are three laws central to the proposed changes to the rules. The first is N.C.G.S. § 113-132, Jurisdiction of fisheries agencies, as described above. This law provides express authority for the MFC and the WRC to make joint rules for "rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters", which is where the jurisdictions of the two agencies overlap.

The second law is N.C.G.S. § 113-174.1, License required; general provisions governing licenses. The Coastal Recreational Fishing License (CRFL) was implemented effective Jan. 1, 2007, after these joint rules were last amended. To account for the various licenses available to adhere to the requirements to engage in recreational fishing in the State, N.C.G.S. § 113-174.1 was amended. Under current laws, there are now three categories of recreational fishing licenses available to an angler to fish in joint fishing waters: Coastal Recreational Fishing Licenses (for coastal and joint fishing waters); Inland Fishing Licenses (for inland and joint fishing waters); and Unified Licenses (for inland, joint, and coastal fishing waters).

The third law is N.C.G.S. § 113-129, Definitions relating to resources. This law defines "coastal fishing waters", "inland fishing waters", and "joint fishing waters". Coastal fishing waters include out to three miles in the Atlantic Ocean through the sounds and estuarine waters up to the dividing line with inland fishing waters. All references in laws and rules to commercial fishing waters apply to coastal fishing waters. Inland fishing waters include all waters connecting with or tributary to the coastal sounds or the ocean upstream from the dividing line with coastal fishing waters. Joint fishing waters are coastal fishing waters that have a significant number of freshwater fish as agreed upon by the MFC and the WRC. By law, joint fishing waters are a subset of coastal fishing waters.

To understand these freshwater fish, it is helpful to review the definition of "inland game fish", which is also set out in N.C.G.S. § 113-129, in item (10). Inland game fish are the species of freshwater fish found in any waters (inland, joint, and coastal fishing waters), and the species of migratory saltwater fish when found in inland fishing waters that have an important element of sport in taking and that are designated as inland game fish in WRC rule; in other words, fish prized for the sport it gives the angler in its capture, rather than for value as food. Importantly, no species of fish of commercial importance not already classified as a game fish in commercial fishing waters as of Jan. 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the MFC.

Finally, it is important to describe a pertinent WRC rule that is not subject to joint re-adoption that is related to N.C.G.S. § 113-129(10). Rule 15A NCAC 10C .0301 (Appendix III) designates inland game fishes. The WRC adopted the rule in 1976. It has been amended seven times since

and the WRC readopted the rule Aug. 1, 2020. It includes various freshwater fish that are found in any waters, such as mountain, rainbow, and brook trout; walleye; and various species of pickerel, black bass, crappie, and sunfish. Some migratory saltwater fish are also in the rule, including yellow perch; spotted seatrout; flounder; red drum; striped bass; American and hickory shad; and several species of catfish. These fish are listed in the rule with the caveat "when found in inland fishing waters" because concurrence of the MFC is required by N.C.G.S. § 113-129(10) for these fish to be classified as inland game fish in coastal fishing waters (unless they were already classified as a game fish as of Jan. 1, 1965). This concurrence does not appear to have ever been sought by the WRC or given by the MFC until Sept. 9, 2021 when the MFC readopted the nine rules in 15A NCAC 03Q .0100 and updated the list of species that are of commercial importance in 15A NCAC 03Q .0103(b).

The Nov. 20, 2020 WRC public comments specifically stated in reference to this rule that "the list of inland game fish is outdated. This sentence should be revised to either list current species or reference Rule 15A NCAC 10C .0301 Inland Game Fishes Designated." Amendments to 03Q .0103 will accomplish this.

Summary of Proposed Changes to 15A NCAC 03Q .0100

With this background, an explanation of the proposed changes to each of the MFC joint rules is provided here. Overall, proposed changes conformed the rules to authorizing statutes, removed text that merely repeats the content of laws or rules, updated a list of species to match current management practices by both agencies, used defined terms consistently, and clarified existing text. Please refer to Appendix I for the proposed rules and to see the referenced line numbers.

15A NCAC 03Q .0101 SCOPE AND PURPOSE

Proposed changes conform to the authorizing statutes. On **line 13**, text has been added that links to N.C.G.S. § 113-132, Jurisdiction of fisheries agencies. This law sets out that the MFC has jurisdiction over the conservation of marine and estuarine resources and the WRC has jurisdiction over the conservation of wildlife resources. Where these jurisdictions overlap, which is called "joint fishing waters", the two agencies have concurrent jurisdiction and may have "jointly adopted rules" to determine who manages what species. Proposed changes rely on the statutory definition of "joint fishing waters" (N.C.G.S. § 113-129(10a)).

The rulemaking process for the joint rules is set out in the Administrative Procedure Act in N.C.G.S. § 150B-21.2, Procedure for adopting a permanent rule, as referred to now on **line 12**. On **lines 15 and 16**, "jointly adopted rules" replaces "guidelines", to conform to the language in N.C.G.S. § 113-132. Proposed changes on **lines 19 and 20** address the WRC comments to refer to Division of Marine Fisheries (DMF) and WRC officers consistently, which is done by referring to how each agency's officers are defined in N.C.G.S. § 113-128 ("marine fisheries inspectors" and "wildlife protectors").

On **line 24** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. This law is entitled "Authority of the Wildlife Resources Commission in regulation of inland fishing and introduction of exotic species". It is the analog to the law for the MFC's authority over marine and estuarine resources in coastal fishing waters, which is N.C.G.S. § 113-182, "Regulation of fishing and fisheries". Other minor changes adjust punctuation; word choice, such as using "that"

instead of "which"; and rearrange existing text to improve readability and make the rule easier to understand. These types of minor changes are proposed across the group of rules and are not discussed further in this document. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0102 INLAND FISHING WATERS

Proposed changes address the WRC comments to remove text that repeats the content of laws, as shown on **lines 4 through 7**, specifically by referencing N.C.G.S. § 113-129 instead of repeating text from the law. Once again on **line 9**, text has been added that links to N.C.G.S. § 113-132, Jurisdiction of fisheries agencies, conforming the rule to an authorizing statute. Proposed changes on **lines 13 and 14** address the WRC comments to refer to DMF and WRC officers consistently. On **line 16**, in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. Again, this WRC law is the analog to the law for the MFC's authority. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

Many of the same types of changes already summarized in the first two rules are proposed in this rule as well. On **lines 4 through 6**, proposed changes remove text that repeats the content of laws, addressing the WRC comments. So again, N.C.G.S. § 113-129 is referenced instead of repeating text from the law.

Changes are proposed to conform to the authorizing statutes on **line 8** for the Jurisdiction of fisheries agencies, N.C.G.S. § 113-132, and on **line 10** for the Coastal Recreational Fishing License, N.C.G.S. § 113-174.1. This law became effective Jan. 1, 2007 and implemented the Coastal Recreational Fishing License, or "CRFL", for recreational fishing in saltwater (see Article 14B of Chapter 113 for all CRFL types). It is important to note this law was enacted well after the MFC's joint rules were originally adopted or last amended.

Under the current laws, there are now three categories of recreational fishing licenses available to an angler fishing in joint fishing waters. Coastal Recreational Fishing Licenses allow fishing in coastal and joint fishing waters, Inland Fishing Licenses (see Article 21 of Chapter 113) allow fishing in inland and joint fishing waters, and Unified Licenses (see Article 25A of Chapter 113) allow fishing in all three waterbody types: coastal, joint, and inland fishing waters. Before there was a "saltwater" recreational fishing license, in essence there were recreational waters and commercial waters, known as coastal fishing waters today. Joint fishing waters were designated as coastal fishing waters where the authority of the MFC and the WRC may overlap based on the presence of freshwater species of fish managed by the WRC (N.C.G.S. § 113-129(10a)). The only available license for recreational fishing in joint fishing waters prior to Jan. 1, 2007 was an Inland Fishing License. This same information about the recreational fishing licenses is important for the summary of the proposed repeal of 03Q .0106 described further below.

On lines 9 through 27, proposed changes to 03Q .0103 address the WRC's comments to either list the current species in the rule or reference the WRC's inland game fish rule. To explain further, on **lines 9-13**, the existing text of the rule states that fishing in coastal fishing waters is under the MFC's jurisdiction except for inland game fish that are in coastal fishing waters, which fall under the WRC's authority. There are only three exceptions currently listed: spotted seatrout, weakfish, and striped bass, as shown on **lines 12 and 13**. Inland game fish are designated in the WRC's rule 15A NCAC 10C .0301 (Appendix III). A reference to this rule is proposed to be added on **line 12** of 03Q .0103. Also on **line 11** there is proposed text citing another authorizing statute, N.C.G.S. § 113-129, item (10). This item is the statutory definition of "inland game fish". The law states that as of Jan. 1, 1965, no species of fish of commercial importance may be classified as a game fish in coastal fishing waters without the concurrence of the MFC. This concurrence does not appear to have been sought by the WRC or granted by the MFC until Sept. 9, 2021 when the MFC gave final approval of the revised joint rules at a special meeting and it ties into a closer look at the WRC's inland game fish rule, 10C .0301.

The WRC adopted rule 10C .0301 in 1976. It has been amended seven times since and was readopted Aug. 1, 2020. It designates inland game fishes under the WRC's authority. The rule includes various freshwater fish that are found in any waters (inland, joint, and coastal fishing waters), such as mountain, rainbow, and brook trout; walleye; and various species of pickerel, black bass, crappie, and sunfish. Some migratory saltwater fish are also in the rule, including yellow perch; spotted seatrout; flounder; red drum; striped bass; American and hickory shad; and several species of catfish. A review of this rule helps to identify the species that may be of commercial importance by the addition of the phrase "when found in inland fishing waters" (Appendix III). These species and groups of species have been designated over the years by the WRC as inland game fish only when found in inland fishing waters. This seems to be the approach taken by the WRC over the years instead of seeking concurrence by the MFC about species not of commercial importance in coastal fishing waters.

Again, in its public comments on the MFC's joint rules, the WRC suggested either listing the current species that are of commercial importance and that are under the jurisdiction of the MFC in the rule, or referencing the WRC rule. So in 03Q .0103, the "half full" approach to list the species under MFC authority in an MFC rule provides the most clarity, which is what is shown on **lines 14 through 24**. The list of 11 species was based on a review of ongoing DMF fishery dependent biological (fish house) sampling and commercial landings as reported by the N.C. Trip Ticket Program and is consistent with current management practices by the MFC and the WRC, for regulated stakeholders, and continues the same conservation management measures currently in place for fisheries resources of the State. In other words, proposed changes merely update this rule to match current conditions.

On lines 25 through 27, proposed changes set a control date of Aug. 1, 2020 for incorporating by reference 10C .0301. So, the WRC rule is adopted by reference in this rule, specifically not including subsequent amendments. This ensures that any future potential inland game fish designations have the opportunity for MFC concurrence first, as N.C.G.S. § 113-129(10) requires.

Another benefit of the proposed changes is to clarify the WRC has authority in all waters for inland game fish that are not of commercial importance. These joint rules address who manages what species in joint fishing waters. If a species is a freshwater fish that is not of commercial importance, the WRC has authority for that species in inland, joint, and coastal fishing waters.

Lastly, on **lines 28-32**, proposed changes address the WRC comments to refer to DMF and WRC officers consistently. On **line 34** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State; however final adoption of this rule is the MFC concurrence required by N.C.G.S. § 113-129(10) for those species that are not of commercial importance.

15A NCAC 03Q .0104 JOINT FISHING WATERS

Once again, proposed changes address the WRC comments to remove text that repeats the content of laws. On **line 5**, N.C.G.S. § 113-129 is referenced instead of repeating text from the law. Additional changes are proposed to conform to the authorizing statutes by adding text that links to N.C.G.S. § 113-132, Jurisdiction of fisheries agencies, as shown on **lines 7 and 9**. Proposed new text on **lines 11 through 13** clarifies each agency has authority for hook and line recreational fishing in accordance with N.C.G.S. § 113-132. This ties into the changes summarized for rule 03Q .0103 consistent with the addition of the Coastal Recreational Fishing License (N.C.G.S. § 113-174.1) and also ties into the proposed repeal of 03Q .0106 that is described further below. On **lines 14 and 15**, proposed text addresses the WRC comments to refer to DMF and WRC officers consistently. On **line 16** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0105 POSTING DIVIDING LINES

Proposed changes consist only of minor technical and conforming changes to improve readability and make the rule easier to understand. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS

This rule is proposed for repeal through readoption. Paragraph (a) of the rule on **lines 4 through 6** only repeats the content of laws and rules and so, consistent with the WRC comments to remove text that repeats the content of laws, the text is not needed.

Paragraph (b) of the rule on **lines 7 through 11** is now addressed by proposed changes to 03Q .0102(b) and (c), .0103(b) and (c), and .0104(b). A change to the authorizing statutes involved with these rules is what triggered these changes and results in .0106 no longer being necessary. N.C.G.S. § 113-174.1 became effective Jan. 1, 2007 and implemented the Coastal Recreational Fishing License, or "CRFL", for recreational fishing in saltwater (see Article 14B of Chapter 113

for all CRFL types). It is important to note this law was enacted well after the MFC's joint rules were originally adopted or last amended.

Under the current laws, there are now three categories of recreational fishing licenses available to an angler to fish in joint fishing waters. Coastal Recreational Fishing Licenses allow fishing in coastal and joint fishing waters, Inland Fishing Licenses (see Article 21 of Chapter 113) allow fishing in inland and joint fishing waters, and Unified Licenses (see Article 25A of Chapter 113) allow fishing in all three waterbody types: coastal, joint, and inland fishing waters. Before there was a "saltwater" recreational fishing license, in essence there were recreational waters and commercial waters, known as coastal fishing waters today. Joint fishing waters were designated as coastal fishing waters where the authority of the MFC and the WRC may overlap based on the presence of freshwater species of fish managed by the WRC. The only available license for recreational fishing in joint fishing waters prior to Jan. 1, 2007 was an Inland Fishing License.

Rule .0106 was originally needed to clarify what licensing and fishing requirements applied in joint fishing waters (thus its title, "Applicability of Rules: Joint Waters"). Now that a "saltwater" recreational fishing license has been enacted by N.C.G.S. § 113-174.1, the purpose of .0106 has been made moot and requirements can and are proposed to reside in the rule for the respective waterbody type: .0102 (Inland Fishing Waters), .0103 (Coastal Fishing Waters), and .0104 (Joint Fishing Waters). In particular, new Paragraph (b) of .0104 clears up ambiguity in the phrase in .0106(b)(3) "except as hereinafter provided" by plainly stating each agency shall implement their respective hook and line recreational fishing requirements in joint fishing waters.

For the proposed rule changes across 03Q .0100, in addition to following the requirement to remove text from rule that merely repeats the content of laws, the MFC is adhering to the requirement that a rule cannot supersede the authority of laws. With the conforming amendments made across the group of nine MFC joint rules, .0106 is unnecessary and needs to be repealed. The cumulative effect of repealing 03Q .0106 is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0107 SPECIAL REGULATIONS FOR JOINT FISHING WATERS

The purpose of this rule is to harmonize potential differences between MFC and WRC rules relative to specific subjects. These subjects currently include striped bass, as shown on **lines 10 through 28**, Lake Mattamuskeet, as shown on **lines 29 through 33**, Cape Fear River, as shown on **lines 34 and 35**, and shad, on **lines 36 and 37**.

The shad portion of the rule has been suspended by proclamation starting in 2014 (FF-3-2014) due to ongoing changes needed to conform to the N.C. American Shad Sustainable Fishery Plan, which is part of Amendment 3 to the Atlantic States Marine Fisheries Commission Interstate FMP for Shad and River Herring. At the interstate level, the shad requirements in the rule have been changing and are expected to continue changing, so they need to be removed from the rule while continuing to rely on existing proclamation authority (15A NCAC 03M .0512) to set shad requirements. Additionally, in November 2021, the MFC approved the repeal of another rule with the same requirements for shad (15A NCAC 03M .0519). The removal of the shad requirements from 03Q .0107 makes a necessary update to a rule that does not reflect existing

management practices and results in no change to current management practices by the MFC or the WRC and no change for regulated stakeholders.

Other proposed changes to 03Q .0107 on **lines 4 through 6** address the WRC comments to refer to DMF and WRC officers consistently. Additionally, minor conforming and technical changes are proposed throughout the rule to improve readability and make the rule easier to understand. On **page 2, line 2** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT FISHING WATERS

Proposed changes consist only of minor technical and conforming changes to improve readability and make the rule easier to understand. On **line 19** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS FISHERY MANAGEMENT PLAN: RECREATIONAL FISHING

The N.C. Estuarine Striped Bass FMP is mandated in accordance with N.C.G.S. § 113-182.1 and N.C.G.S. § 143B-289.52, both of which are part of the Fisheries Reform Act of 1997 and require the DMF to prepare FMPs for adoption by the MFC for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. This FMP is jointly developed with the WRC and is what governs management of estuarine striped bass in North Carolina waters since estuarine striped bass occur in inland, joint, and coastal fishing waters. This FMP is also how North Carolina maintains compliance with the Atlantic States Marine Fisheries Commission Interstate FMP for Atlantic Striped Bass, as a portion of that migratory ocean stock of fish occurs in North Carolina State waters.

The changes to 03Q .0109 for recreational fishing simply conform out-of-date rule language to current management practices and result in no change in current management practices by the MFC or the WRC and no change for regulated stakeholders. Proposed changes on **lines 7 and 18** link to the N.C. Estuarine Striped Bass FMP, as is already stated in 03Q .0108, and clarify the quota is set by this FMP.

On **line 9**, the existing rule text reflects a practice of implementing management measures "by a single instrument" (proclamation) issued under the authority of the MFC to implement estuarine striped bass restrictions that apply across the jurisdiction of both agencies. Under the current rule text, if a proclamation was implemented by authority of the MFC and became effective for restrictions for the harvest of estuarine striped bass in the joint and coastal fishing waters of the Albemarle Sound Management Area, it would automatically become effective as a WRC action

in the affected inland fishing waters (Roanoke River Management Area) without further action by the WRC.

However, in actuality, this is not how the management practices have occurred in the past or are occurring. Changes to the rule reflect the management practices of each agency that have been occurring for decades. Instead of a single proclamation being issued, the MFC and the WRC each take its own action to implement equivalent management measures within its own jurisdiction, in the Albemarle Sound Management Area or the Roanoke River Management Area, respectively. The authority for each agency to take its own action for the management of estuarine striped bass is set out separately from 03Q .0109. For the MFC, this authority is found in N.C.G.S. § 113-221.1, 15A NCAC 03M .0202, and 03M .0512 for proclamations. For the WRC, this authority is found in N.C.G.S. § 150B-21.1(a)(7) for temporary rulemaking and N.C.G.S. § 113-292 and 15A NCAC 10C .0314 for proclamations. Proposed changes simply conform the rule to existing authority and management that provides flexibility to both agencies to prevent estuarine striped bass harvest from exceeding the total allowable take of fish under the FMP.

On **line 24** in the history note of the rule, N.C.G.S. § 113-292 is proposed to be added. The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

Collectively, changes were proposed to 15A NCAC 03Q .0100 rules in consideration of the public comments received during the rulemaking process. Specifically, proposed changes conformed the rules to authorizing statutes, removed text that merely repeated the content of laws or rules, updated a list of species to match current management practices by both agencies, used defined terms consistently, and clarified existing text.

IV. Fiscal Impact Analysis

The nine rules in 15A NCAC 03Q .0100 have been reviewed to conform to the requirements of N.C.G.S. § 150B-21.3A and authorizing statutes and also to address public comment received during the rulemaking process. None of the proposed readoptions contain amendments that produce procedural changes, and therefore no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements. In short, all proposed changes are either intended to provide heightened clarity to rule language or to conform rule language to authorizing statutes, FMPs, and ongoing management practices. Four of the rules have proposed changes beyond simple conforming changes or minor changes to adjust punctuation and word choice or improve readability; these four rules are summarized here in regards to fiscal impact.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

The Nov. 20, 2020 WRC public comments specifically stated in reference to this rule that "the list of inland game fish is outdated. This sentence should be revised to either list current species or reference rule 15A NCAC 10C .0301 Inland Game Fishes Designated." Amendments to 03Q .0103 accomplished this and were given final approval by the MFC Sept. 9, 2021. The "half full" approach to list the species under MFC authority in an MFC rule provides the most clarity. The

list of 11 species was based on a review of ongoing DMF fishery dependent biological (fish house) sampling and commercial landings as reported by the N.C. Trip Ticket Program and is consistent with current management practices by the MFC and the WRC, for regulated stakeholders, and continues the same conservation management measures currently in place for fisheries resources of the State. In other words, proposed changes merely update this rule to match current conditions, so no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements.

15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS

This rule is proposed for repeal through readoption. Rule .0106 was originally adopted to clarify what licensing and fishing requirements applied in joint fishing waters (thus its title, "Applicability of Rules: Joint Waters"). Now that a "saltwater" recreational fishing license has been enacted by N.C.G.S. § 113-174.1, the purpose of .0106 has been made moot and requirements can and are proposed to reside in the rule for the respective waterbody type: 03Q .0102 (Inland Fishing Waters), 03Q .0103 (Coastal Fishing Waters), and 03Q .0104 (Joint Fishing Waters). With the conforming amendments made across the group of nine MFC joint rules, 03Q .0106 is unnecessary and needs to be repealed.

15A NCAC 03Q .0107 SPECIAL REGULATIONS FOR JOINT FISHING WATERS

The purpose of this rule is to harmonize potential differences between MFC and WRC rules relative to specific subjects. The shad portion of the rule has been suspended by proclamation starting in 2014 (FF-3-2014) due to ongoing changes needed to conform to the N.C. American Shad Sustainable Fishery Plan, which is part of Amendment 3 to the Atlantic States Marine Fisheries Commission Interstate FMP for Shad and River Herring. At the interstate level, the shad requirements in the rule have been changing and are expected to continue changing, so they need to be removed from the rule while continuing to rely on existing proclamation authority (15A NCAC 03M .0512) to set shad requirements. The removal of the shad requirements from 03Q .0107 makes a necessary update to a rule that does not reflect existing management practices, so no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements.

**15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS
FISHERY MANAGEMENT PLAN: RECREATIONAL
FISHING**

Proposed changes to this rule update the rule to reflect the management practices of each agency that have been occurring for decades. Instead of a single proclamation being issued, the MFC and the WRC each take its own action to implement equivalent management measures within its own jurisdiction, in the Albemarle Sound Management Area or the Roanoke River Management Area, respectively. Proposed changes simply conform the rule to existing authority and management that provides flexibility to both agencies to prevent estuarine striped bass harvest from exceeding the total allowable take of fish under the FMP.

The cumulative effect of these proposed rule changes is no change to current management practices by the MFC or the WRC, no change for regulated stakeholders, and continuation of the same conservation management measures currently in place for fisheries resources of the State.

Therefore, no economic costs to the State are incurred and only qualitative benefits are expected in the form of clarity of requirements.

1 **Appendix I. Proposed Rules for Readoption.**

2

3 15A NCAC 03Q .0101 is proposed for readoption with substantive changes as follows:

4

5 **SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS**

6

7 **SECTION .0100 - GENERAL REGULATIONS: JOINT**

8

9 **15A NCAC 03Q .0101 SCOPE AND PURPOSE**

10 The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland
11 fishing ~~waters~~ waters, and joint fishing waters. ~~These rules are waters and shall be adopted jointly in accordance with~~
12 G.S. 150B-21.2 by both the Marine Fisheries Commission and the Wildlife Resources Commission. ~~Commission due~~
13 to the existence of concurrent jurisdiction, in accordance with G.S. 113-132. These jointly adopted rules shall not
14 affect the jurisdiction of the Marine Fisheries Commission or the Wildlife Resources Commission in any matters other
15 than those specified in this Section. ~~In addition to the classification of the waters of the state these joint~~ These jointly
16 adopted rules set forth guidelines to may determine which the fishing activities in joint fishing waters that are regulated
17 by the Marine Fisheries Commission and which are regulated Commission, by the Wildlife Resources
18 Commission. ~~Commission, or by both commissions. Finally, the joint~~ These jointly adopted rules set forth special
19 fishing regulations applicable in joint waters that can shall be enforced by officers of the Division of Marine Fisheries
20 and the Wildlife Resources Commission. ~~both marine fisheries inspectors and wildlife protectors.~~ These regulations
21 do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any
22 matters other than those specifically set out.

23

24 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

25 *Eff. January 1, 1991;*

26 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0102 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0102 INLAND FISHING WATERS**

4 (a) Inland fishing waters are all inland waters except private ponds; and all waters connecting with or tributary to
5 coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing
6 waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission, defined in G.S.
7 113-129. All waters which that are tributary to inland fishing waters and which that are not otherwise designated by
8 agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are in rule in
9 accordance with G.S. 113-132 shall be inland fishing waters.

10 (b) The regulation and licensing of fishing in inland fishing waters is shall be under the jurisdiction of the Wildlife
11 Resources Commission.

12 (c) Regulations Rules and laws administered by the Wildlife Resources Commission regarding fishing in inland
13 fishing waters administered by the Wildlife Resources Commission are shall be enforced by wildlife enforcement
14 officers, protectors.

15

16 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

17 *Eff. January 1, 1991;*

18 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0103 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0103 COASTAL FISHING WATERS**

4 (a) Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing
5 line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and
6 the Wildlife Resources Commission, defined in G.S. 113-129. All waters which that are tributary to coastal fishing
7 waters and which that are not otherwise designated by agreement between the Marine Fisheries Commission and the
8 Wildlife Resources Commission are in rule in accordance with G.S. 113-132 shall be coastal fishing waters.

9 (b) The regulations and licensing of regulation of fishing in coastal fishing waters and licensing of fishing in coastal
10 fishing waters is waters, in accordance with G.S. 113-174.1, shall be under the jurisdiction of the Marine Fisheries
11 Commission; Commission, except that including for the following inland game fish as defined in G.S. 113-129(10)
12 and as set forth in 15A NCAC 10C .0301 that are of commercial importance:(exclusive of spotted seatrout, weakfish,
13 and striped bass) are subject to regulations by the Wildlife Resources Commission in coastal fishing waters.

- 14 (1) American shad;
15 (2) brown bullhead;
16 (3) flounder, including Gulf flounder, southern flounder, and summer flounder;
17 (4) hickory shad;
18 (5) red drum;
19 (6) spotted seatrout;
20 (7) striped bass, including morone hybrids;
21 (8) white catfish;
22 (9) white perch;
23 (10) yellow bullhead; and
24 (11) yellow perch.

25 The Marine Fisheries Commission, pursuant to G.S. 113-129(10), concurs with inland game fish as set forth in 15A
26 NCAC 10C .0301 as of August 1, 2020, excluding the species in this Paragraph of this Rule. Rule 15A NCAC 10C
27 .0301 is hereby incorporated by reference not including subsequent amendments.

28 (c) Regulations Rules and laws administered by the Marine Fisheries Commission regarding fishing in coastal fishing
29 waters are shall be enforced by marine fisheries enforcement officers. inspectors. Regulations Rules and laws
30 regarding inland game fish fish, excluding the species in Paragraph (b) of this Rule, in coastal fishing waters are
31 waters, including joint fishing waters, shall be enforced by wildlife enforcement officers unless otherwise agreed to
32 by the Wildlife Resources Commission protectors.

33

34 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

35 *Eff. January 1, 1991;*

36 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0104 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0104 JOINT FISHING WATERS**

4 (a) Joint fishing waters are those coastal fishing waters, hereinafter set out, denominated by agreement of defined in
5 G.S. 113-129 and are waters adopted by both the Marine Fisheries Commission and the Wildlife Resources
6 Commission pursuant to G.S. 113-132(e) as joint fishing waters. waters when concurrent jurisdiction exists in
7 accordance with G.S. 113-132. All waters which that are tributary to joint fishing waters and which that are not
8 otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources
9 Commission in rule in accordance with G.S. 113-132 shall be are classified as joint fishing waters. The regulation and
10 licensing of fishing in joint waters shall be as stated in 15A NCAC 3Q .0106.

11 (b) In joint fishing waters the Marine Fisheries Commission and the Wildlife Resources Commission shall
12 implement their respective management actions for hook and line recreational fishing pursuant to their
13 respective rule-making authority in accordance with G.S. 113-132, except as otherwise provided in this
14 Section. Rules and laws regarding fishing in joint fishing waters shall be enforced by both marine fisheries
15 inspectors and wildlife protectors.

16

17 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*
18 *Eff. January 1, 1991;*
19 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0105 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0105 POSTING DIVIDING LINES**

4 (a) The dividing lines of all major bodies of water and watercourses ~~which are divided by the agreement of~~ agreed
5 upon by the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same body
6 of water are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs
7 ~~in so far insofar~~ as may be practicable. ~~Unmarked and undesignated tributaries shall have the same classification as~~
8 ~~the designated waters to which they connect or into which they flow.~~

9 (b) ~~No unauthorized~~ Unauthorized removal or relocation of ~~any such a~~ a marker shall have ~~the no~~ no effect of ~~changing~~
10 on the classification of any body of water or portion thereof, nor shall any ~~such~~ such unauthorized removal or relocation or
11 the absence of ~~any a~~ a marker affect the applicability of any regulation pertaining to any ~~such~~ such body of water or portion
12 thereof.

13

14 *History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;*

15 *Eff. January 1, 1991;*

16 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0106 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS**

4 ~~(a) All coastal fishing laws and regulations administered by the Department of Environment and Natural Resources~~
5 ~~and the Marine Fisheries Commission apply to joint waters except as otherwise provided, and shall be enforced by~~
6 ~~fisheries enforcement officers.~~

7 ~~(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to~~
8 ~~joint waters and shall be enforced by wildlife enforcement officers:~~

9 (1) ~~all laws and regulations pertaining to inland game fishes,~~

10 (2) ~~all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,~~

11 (3) ~~all laws and regulations pertaining to hook and line fishing except as hereinafter provided.~~

12

13 *History Note: Authority G.S. 113-132; 113-134; 143B-289.52;*

14 *Eff. January 1, 1991;*

15 *Amended Eff. July 1, 1999;*

16 *Repealed Eff. August 1, 2022.*

1 15A NCAC 03Q .0107 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0107 SPECIAL REGULATIONS: ~~REGULATIONS FOR JOINT FISHING WATERS~~**

4 ~~In order to~~To effectively manage all fisheries resources in joint fishing waters and ~~in order to~~ confer enforcement
5 powers on both marine fisheries ~~enforcement officers-inspectors~~ and wildlife ~~enforcement officers-protectors~~ with
6 respect to certain ~~rules, regulations,~~ the Marine Fisheries Commission and the Wildlife Resources Commission deem
7 it necessary to adopt special ~~rules-regulations~~ for joint fishing waters. ~~Such rules supersede~~This Rule supersedes any
8 inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise
9 be applicable in joint fishing waters under the ~~provisions of 15A NCAC 03Q .0106:~~Rules of this Section as follows:

10 (1) ~~Striped Bass-Bass:~~

11 (a) ~~It is it shall be~~ unlawful to possess any striped bass or striped bass hybrid that is less than
12 18 inches long (total length).

13 (b) ~~It is it shall be~~ unlawful to possess striped bass or striped bass hybrids between the lengths
14 of 22 and 27 inches (total length) in joint fishing waters of the Central Southern
15 Management Area as designated in 15A NCAC 03R .0201.

16 (c) ~~It is it shall be~~ unlawful to possess striped bass or striped bass hybrids May through
17 September in the joint fishing waters of the Central Southern Management Area and the
18 Albemarle Sound Management ~~Area.~~Area as designated in 15A NCAC 03R .0201.

19 (d) ~~It is it shall be~~ unlawful to possess striped bass or striped bass hybrids taken from the joint
20 fishing waters of the Cape Fear River.

21 (e) ~~It is it shall be~~ unlawful to possess more than one daily creel limit of striped bass or striped
22 bass hybrids, in the aggregate, per person per day, regardless of the number of management
23 areas fished.

24 (f) ~~Possession-possession~~ of fish shall be assessed for the creel and size limits of the
25 management area in which the individual is found to be fishing, regardless of the size or
26 creel limits for other management areas visited by that individual in a given day.

27 (g) ~~It is it shall be~~ unlawful to engage in net fishing for striped bass or striped bass hybrids in
28 joint fishing waters except as authorized by rules of the Marine Fisheries Commission.

29 (2) Lake Mattamuskeet:

30 (a) ~~It is it shall be~~ unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals
31 designated as joint fishing waters.

32 (b) ~~It is it shall be~~ unlawful to use or attempt to use any trawl net or seines in Lake
33 Mattamuskeet canals designated as joint fishing waters.

34 (3) Cape Fear ~~River. It is River:~~ it shall be unlawful to use or attempt to use any net, net ~~stakes-stakes,~~
35 or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.

36 (4) ~~Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per~~
37 ~~person per day taken by hook and line.~~

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7

*History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 1993; November 1, 1991;
Temporary Amendment Eff. May 1, 2000;
Amended Eff. July 1, 2008; September 1, 2005; April 1, 2001; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03Q .0108 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN**
4 **JOINT FISHING WATERS**

5 (a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC
6 03R .0201.

7 (b) ~~In order to~~ To effectively manage the recreational hook and line harvest in joint fishing waters of the Albemarle
8 Sound-Roanoke River stock of estuarine striped bass, the Marine Fisheries Commission and the Wildlife Resources
9 Commission deem it necessary to establish two management ~~areas;~~ areas: the Albemarle Sound Management Area
10 and the Roanoke River Management Area as designated in 15A NCAC 03R .0201. The Wildlife Resources
11 Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing
12 waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management
13 responsibility for the stock in the coastal, ~~joint~~ joint, and inland fishing waters of the Albemarle Sound Management
14 Area. The annual quota for recreational harvest of the Albemarle-Roanoke estuarine striped bass stock shall be divided
15 equally between the two management areas. Each commission shall implement management actions for recreational
16 harvest within their respective management areas that ~~will~~ shall be consistent with the North Carolina Estuarine
17 Striped Bass Fishery Management Plan.

18

19 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*
20 *Eff. January 1, 1991;*
21 *Amended Eff. October 1, 2004; September 1, 1991;*
22 *Readopted Eff. August 1, 2022.*

1 15A NCAC 03Q .0109 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS FISHERY**
4 **MANAGEMENT PLANS: PLAN: RECREATIONAL FISHING**

5 The Marine Fisheries Commission and the Wildlife Resources ~~Commissions~~-Commission shall implement their
6 respective estuarine striped bass management actions for recreational fishing pursuant to their respective rule-making
7 ~~powers~~-powers and the North Carolina Estuarine Striped Bass Fishery Management Plan. To preserve jurisdictional
8 authority of each Commission, the following means are established through which management measures ~~can~~-shall
9 be implemented ~~by a single instrument~~ in each of the following management areas:

- 10 (1) ~~In~~-in the Roanoke River Management Area, the exclusive authority to open and close seasons and
11 ~~areas~~-areas and establish size and creel ~~limits~~-limits, whether inland or joint fishing ~~waters~~-waters,
12 shall be vested in the Wildlife Resources Commission. ~~An instrument closing any management area~~
13 ~~in joint waters shall operate as and shall be a jointly issued instrument opening or closing seasons~~
14 ~~or areas to harvest in the Roanoke River management area.~~
- 15 (2) ~~In~~-in the Albemarle Sound Management Area, the exclusive authority to open and close seasons and
16 areas and establish size and creel limits, whether coastal or joint fishing ~~waters~~-waters, shall be
17 vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota set
18 by the North Carolina Estuarine Striped Bass Fishery Management Plan is ~~about~~-projected to be
19 ~~exceeded~~-taken. ~~In the Albemarle Sound Management Area administered by the Marine Fisheries~~
20 ~~Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke~~
21 ~~River Management Area, shall automatically be implemented and effective as a Wildlife Resources~~
22 ~~Commission action in the inland waters and tributaries to the waters affected.~~

23

24 *History Note: Authority G.S. 113-132; 113-134; 113-182; 113-292; 143B-289.52;*

25 *Eff. January 1, 1991;*

26 *Amended Eff. October 1, 2004; September 1, 1991;*

27 *Readopted Eff. August 1, 2022.*

Appendix II. WRC Public Comments.



North Carolina Wildlife Resources Commission

Cameron Ingram, Executive Director

November 20, 2020

Catherine Blum
Rulemaking Coordinator
N.C. Division of Marine Fisheries
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RE: Comments on Division of Marine Fisheries Joint Fishing Water Rules (15A NCAC 03Q .0100)

The Wildlife Resources Commission (WRC) respectfully submits the following comments on the Division of Marine Fisheries (DMF) Joint Fishing Water Rules, formally proposed by the Marine Fisheries Commission (MFC) on August 20, 2020 and noticed in the N.C. Register on October 1, 2020.

15A NCAC 03Q .0101 Scope and Purpose

This rule states that all rules in Section 03Q .0100 are adopted jointly by the MFC and WRC. As such, we believe that re-adoption of these rules will require a vote from both boards prior to completion of the rule-making process. While the WRC does not oppose the MFC noticing these unchanged rules, we would appreciate the chance to discuss potential updates to these 30-year old rules and the DMF's plan to ensure joint re-adoption prior to final approval.

15A NCAC 03Q .0102 Inland Fishing Waters

Per G.S. 150B-19(4), an agency may not adopt a rule that repeats the content of a law, a rule, or a federal regulation. The first sentence of this rule re-states the statutory definition of coastal fishing waters and should be revised to reference G.S. 113-129.

15A NCAC 03Q .0103 Coastal Fishing Waters

Per G.S. 150B-19(4), an agency may not adopt a rule that repeats the content of a law, a rule, or a federal regulation. The first sentence of this rule re-states the statutory definition of coastal fishing waters and should be revised to reference G.S. 113-129. Additionally, the list of inland game fish is outdated. This sentence should be revised to either list current species or reference Rule 15A NCAC 10C .0301 Inland Game Fishes Designated.

15A NCAC 03Q .0105 Posting Dividing Lines

While posting dividing lines was historically the preferred and most accurate method for differentiating the classifications on the water, this is likely no longer the most accurate means of communicating this information to the public. We believe, at a minimum, this rule should be updated to reference the

Appendix II. WRC Public Comments.

descriptive boundaries of Coastal-Joint-Inland Waters, currently in Rule 03Q .0202, and direct the public to online maps for more accurate and dependable information. However, we also believe the descriptive boundaries of Coastal-Joint-Inland Waters should be moved to this rule or another joint rule within this Section, to ensure mutual agreement on the dividing lines through joint rulemaking in the future.

15A NCAC 03Q .0106 Applicability of Regulations: Joint Waters

Subparagraph (b)(2) of this Rule is inaccurate, as it does not account for the Coastal Recreational Fishing License (CRFL). Since 2007, either an inland fishing license or CRFL has been acceptable licensure for hook-and-line fishing in joint waters. Additionally, as license requirements are specified in statute, we recommend removing them from this rule.

Subparagraph (b)(3) does not accurately describe how regulations are implemented and enforced on the water. Over time, the premise from which this rule was written has changed, as has the application. Amendments are needed to make requirements of this rule reflect expectations of implementation on the water. These amendments should be determined based on discussion and agreement between the DMF and the WRC. Prior to readoption, the WRC would welcome a discussion on amendments to this rule.

General

The names of both DMF and WRC enforcement officers are inconsistent throughout these rules. Please update all rules to use the phrase "wildlife officers" when referencing WRC enforcement.

The WRC intends to modify the joint rules in Section 10C .0100 to address the issues mentioned above and incorporate technical changes to ensure compliance with current Administrative Procedure Act requirements. We would be happy to share those proposed amendments with the DMF and would welcome the opportunity to collaborate on changes to ensure consistency between joint fishing water rules in both sections of the N.C. Administrative Code prior to readoption.

We look forward to working with you and thank you for the opportunity to comment on these proposed rules. If you have any questions, please contact me at 919-707-0011 or carrie.ruhlman@ncwildlife.org.

Regards,



Carrie Ruhlman
Rulemaking Coordinator
N.C. Wildlife Resources Commission

Appendix III. WRC Rule 15A NCAC 10C .0301, with emphasis.

SECTION .0300 - GAME FISH

15A NCAC 10C .0301 INLAND GAME FISHES DESIGNATED

The following fishes are classified and designated as inland game fishes:

- (1) mountain trout, all species including but not limited to rainbow, brown and brook trout;
- (2) muskellunge, chain (jack) and redfin pickerel;
- (3) yellow perch, when found in inland waters, walleye and sauger;
- (4) black bass, including Alabama, largemouth, smallmouth, spotted and redeye bass;
- (5) black and white crappie;
- (6) sunfish, including bluegill (bream), redbreast (robin), redear (shellcracker), pumpkinseed, warmouth, rock bass, (redeye), flier, Roanoke bass, and all other species of the sunfish family (Centrarchidae) not specifically listed in this Rule;
- (7) spotted sea trout (speckled trout), when found in inland fishing waters;
- (8) flounder, when found in inland fishing waters;
- (9) red drum (channel bass, red fish, puppy drum), when found in inland fishing waters;
- (10) striped bass, white bass, white perch and Morone hybrids (striped bass-white bass), when found in inland fishing waters;
- (11) American and hickory shad, when found in inland fishing waters;
- (12) kokanee salmon; and
- (13) black bullhead, brown bullhead, flat bullhead, snail bullhead, white catfish, and yellow bullhead, when found in inland fishing waters.

History Note: Authority G.S. 113-134;
Eff. February 1, 1976;
Amended Eff. June 1, 2005; June 1, 2004; July 1, 1996; July 1, 1990; July 1, 1983; January 1, 1981; January 1, 1980;
Readopted Eff. August 1, 2020.