

Fiscal Impact Analysis of Proposed Amendments to Data Collection and Harassment Prevention for the Conservation of Marine and Estuarine Resources Rule Package

Rule Amendments: 15A NCAC 03I .0113 Data Collection
15A NCAC 03O .0101 Procedures and Requirements to Obtain Licenses, Endorsements, and Commercial Fishing Vessel Registrations
15A NCAC 03O .0109 Assignment of Standard Commercial Fishing License
15A NCAC 03O .0112 For-Hire License Requirements
15A NCAC 03O .0301 Eligibility and Requirements for Recreational Commercial Gear Licenses

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:

| | |
|-------------------------|---|
| 50 CFR § 600.725. | General prohibitions. |
| N.C.G.S. § 113-130. | Definitions relating to activities of public. |
| N.C.G.S. § 113-134. | Rules. |
| N.C.G.S. § 113-170.3. | Record-keeping requirements. |
| N.C.G.S. § 113-174.1. | License required; general provisions governing licenses. |
| N.C.G.S. § 113-181. | Duties and powers of Department. |
| N.C.G.S. § 113-182. | Regulation of fishing and fisheries. |
| N.C.G.S. § 113-221.2. | Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized. |
| N.C.G.S. § 143B-289.52. | Marine Fisheries Commission – Powers and Duties. |

Necessity: Due to the increasing occurrence and severity of harassment and decreasing participation in Division of Marine Fisheries (DMF) data collection initiatives, amendments are proposed to several Marine Fisheries Commission (MFC) rules. The amendments add requirements to broaden and enhance protections for DMF employees from harassment that could occur in the process of obtaining data about fishing activity. The amendments also broaden

the applicability of the requirements beyond fish in the licensee's possession by including anyone engaged in these regulated activities. Proposed amendments also list the types of data that may be collected. A detailed description of the changes proposed to each affected rule follows.

I. Background

Responsible fisheries management requires a variety of data inputs collected directly from commercial and recreational activities (dependent sampling) and also from separate sampling programs conducted by researchers (independent sampling). These sampling programs provide information on the health of the targeted and non-targeted fish populations, harvest methods that minimize unintended impacts, demographics of participants in commercial and recreational activities, and the economic contribution of these activities to the people and businesses in the state. Successful collection of data from dependent sampling programs relies on participation of the people involved in these activities and outreach on these programs is a necessary component that can contribute to improvements of willful participation. Many stakeholders and members of the public willingly participate in DMF's data collection initiatives. Nevertheless, there have been instances where individuals refuse to answer survey questions or allow DMF employees to obtain samples, and these instances have escalated in recent years. A portion of these interactions also have been hostile and have bordered on being unsafe. Current rules are not comprehensive in their requirement for participation in data collection programs or in their protection against hostile or offensive interactions with DMF employees for these programs. DMF has a duty to ensure its employees can perform their job functions in an environment that is both physically safe and free from unlawful harassment. In light of this duty, and of recent incidences of harassment of federal and state observers, the DMF is proposing several rule amendments to broaden and enhance protections for its employees, consistent with existing protections for federal employees.

Two recent incidents have highlighted the need to address these rule limitations, both involving samplers with DMF's Marine Recreational Information Program (MRIP). The MRIP is a dependent sampling program designed to collect data about recreational fisheries. MRIP samplers conduct in-person interviews with recreational participants to answer survey questions and collect biological samples from their catch.

In June 2022, there were two incidences in northern North Carolina where individuals associated with for-hire operations harassed MRIP samplers and interfered with data collection. The first incident involved an MRIP sampler intercepting anglers coming off for-hire vessels after their fishing trips. The MRIP sampler witnessed several mates on the for-hire vessels tell the anglers not to answer any of the sampler's questions, and the anglers refused to participate in the survey or provide biological samples. The second incident involved a female MRIP sampler trying to intercept anglers at the same location as the previous incident. When the MRIP sampler attempted to collect biological samples from the fish caught on the trip, the captain made an explicit statement with a sexual connotation while he was video recording her with his phone. The MRIP sampler left the site immediately and was unable to collect any biological samples or survey data. Although these incidents were reported to DMF's Marine Patrol, it was determined that the requirement for participation in biological sampling found in MFC Rule 15A NCAC 03I .0113 could only be enforced with license holders. Because the anglers were allowed to fish under the charter business's Blanket For-Hire Vessel Coastal Recreational Fishing License

(CRFL), they did not hold a license and, therefore, could not be held to the requirements of the rule. It was also determined by Marine Patrol that there were no enforceable requirements that would protect DMF employees from harassment or offensive actions.

For-hire data have become increasingly important as for-hire license sales have steadily increased in recent years. As these new participants enter the recreational for-hire fleet, they may not be familiar with standard DMF sampling events and data collection processes, leading to decreased participation in the MRIP survey. To address this, DMF employees have engaged in additional outreach efforts with the recreational for-hire industry. For example, DMF held two in-person outreach events in October 2022 in the northern area of the state. DMF employees were available to discuss the MRIP and provide an open platform so that for-hire guides and the public could ask questions and learn more about DMF and its data collection initiatives. These meetings served as a way for DMF to connect with its stakeholders on current topics and obtain feedback on how DMF can better collaborate with the for-hire industry in future endeavors. Participants commented that the outreach meetings were beneficial to both parties and should continue to occur.

Isolated incidents of harassment or refusal to participate in data collection efforts also have occurred with participants in commercial fishing operations. DMF employees collect data from commercial participants during fishing activities by fisheries observers and through sampling after fishing activities from landed catch at licensed seafood dealers. Fisheries observers collect a wide range of data for commercial and, to a lesser extent, recreational fisheries either while onboard the fishing vessel or from a DMF-owned (i.e., alternative platform) vessel nearby. Observations of fishing activities using estuarine anchored gill nets are a requirement of DMF's Endangered Species Act Section 10 Incidental Take Permits under the Endangered Species Act, which authorize limited numbers of sea turtle and Atlantic sturgeon interactions in otherwise lawful fishing operations using this gear in N.C. estuarine waters. Participants in the estuarine anchored gill net fishery must obtain an Estuarine Gill Net Permit (EGNP; M-24-2014; <http://portal.ncdenr.org/web/mf/proclamation-m-24-2014>), which facilitates communication from observers to the fishers to schedule observed trips.

Though rare, refusal by participants to provide information and harassment of fisheries observers have occurred. For example, in April 2021, a commercial fisherman was asked for information about his fishing gear by two DMF observers on an alternative platform vessel. The fisherman made an explicit statement with a sexual connotation and refused to provide the information being requested. The observers reported it immediately to the observer coordinator, who relayed the specifics of the event to Marine Patrol. Marine Patrol issued a citation for the incident and the defendant was charged with and found guilty in Dare County District Court of violation of permit conditions by the master of a vessel for harassing the observer in the course of collecting data, and during any other type of communication by an observer. Even though DMF won the case on a simple charge of harassment, the incident highlighted the need to also address concerns about harassment of a sexual nature. To protect observers, a short-term solution was created whereby the special condition form for the EGNP was amended in 2021. The specific permit conditions initially read:

“It is unlawful for an EGNP holder as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples.”

and

“It is unlawful for an EGNP holder as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment includes but is not limited to intimidating, resisting, impeding, threatening, and coercion of observers either verbally or physically.”

In March 2022 following the outcome of the above-described case, this language was strengthened to include harassment of observers by the use of connotations of a sexual nature and read:

“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to interfere with, or obstruct the observer in the course of collecting data or samples, which shall include refusal or failure to provide information on fishing gear parameters or to provide any captured finfish or sea turtle to division staff. 15A NCAC 03O.0502(1)”

and

“It is unlawful for an EGNP holder, as well as the master and crew members of the boat, to harass the observer in the course of setting up trips, collecting data and samples, or during any other type of communication. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o), (t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, and coercion of observers.”

In the fall of 2022, the following language was updated and added to the specific permit conditions for all permits, not just the EGNP, to provide additional protection for all DMF employees, not just observers, to provide short-term protections:

“It shall be unlawful for a permittee or, anyone engaged in permitted activity, to refuse to allow the Fisheries Director or their agents to obtain biological data, harvest information, statistical data, or harass these agents in any way. Harassment shall be defined consistent with the federal regulations, 50 CFR §600.725(o), (t), and (u), and may be verbal or physical including, but not limited to, sexual connotations, intimidating, resisting, impeding, threatening, bribing, or coercion.”

The above examples highlight the need for a long-term solution to protect all DMF employees from harassment in all its forms, regardless of the type of fishing activity, not just by holders of a license or permit. Related, is the need for fishers to provide data, information, and samples so that the DMF can properly manage fisheries in compliance with state and federal laws and meet the requirements of Endangered Species Act Section 10 Incidental Take Permits. These data, information, and samples needed are broader than questions about or samples from fish that are

in possession of the licensee under the current requirements of 15A NCAC 03I .0113. A long-term solution is to amend this rule to explicitly require licensees, and any person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes, to provide the data, information, and samples upon request, and to explicitly prohibit harassment consistent with federal regulations. Table 1 provides a summary of recent actions and the results of those actions leading to proposed rule changes.

Table 1. Summary of recent actions leading to proposed rule changes.

| Time Period | Action | Result |
|-------------|--|---|
| April 2021 | Commercial fisherman charged with observer harassment | DMF identified need to protect observers from harassment by EGNP holders and protect data collection |
| Summer 2021 | DMF added harassment and data collection requirements to EGNP specific condition form | DMF observers offered protection from harassment by EGNP holders and data collection protected |
| March 2022 | Commercial fisherman found guilty of observer harassment in Dare County District Court | DMF identified need to protect observers from harassment in all its forms by EGNP holders |
| March 2022 | DMF added comprehensive harassment requirements to EGNP specific condition form | DMF observers offered protection from harassment in all its forms by EGNP holders |
| June 2022 | Two incidences of harassment of and refusal to provide data to MRIP samplers by individuals associated with for-hire operations | DMF identified need to protect all employees from harassment in all its forms for all regulated fishing activity and protect data collection |
| Fall 2022 | DMF added comprehensive harassment and data collection requirements to specific condition form for all DMF-issued permits | All DMF employees offered protection from harassment in all its forms by all permit holders and data collection protected |
| Fall 2022 | DMF identified need to amend rules to address harassment and data collection for all regulated fishing activity | DMF developed rule changes to protect all employees from harassment in all its forms for all regulated fishing activity and protect data collection |
| Spring 2023 | DMF proposed rule changes to protect all DMF employees from harassment in all forms for all regulated fishing activity and protect data collection | To be determined through the rulemaking process |

Data collected from the commercial and recreational sectors are essential in fisheries management for the state and play a vital role in federal fisheries management, as well. The proposed amendments to this rule broaden the scope to enhance protections for DMF employees as they collect data. Such protections not only enhance the DMF's data collection efforts, but also improve DMF's ability to provide a workplace that is free from unlawful harassment, consistent with the requirements of Title VII of the Civil Rights Act of 1964. While compliance with Title VII is an important goal in reducing civil liability for the DMF, improvements to workplace

protections have numerous additional benefits. A workplace free from unlawful harassment typically leads to higher employee satisfaction, lower turnover, and better recruitment.

The proposed additional requirements are consistent with similar efforts that the federal government has taken to protect its employees during sampling events by including language adapted from the Code of Federal Regulations, [50 CFR § 600.725](https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725)(o), (t), and (u) (<https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>). The protections in the CFR were based on those included in the [Magnuson-Stevens Fishery Conservation and Management Act](#) (MSA), specifically [16 U.S.C. 1857, Section 307, Prohibited Acts](#), which makes it unlawful for any person "to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act" (<https://www.govinfo.gov/content/pkg/USCODE-2021-title16/html/USCODE-2021-title16-chap38-subchapIV-sec1857.htm>). Rule language in 50 CFR § 600.725, effective July 1, 1996, was based on the reorganization of requirements across nine CFR parts relevant to the MSA. The MSA and referenced USC and CFR help to demonstrate the importance of keeping fishery observers safe from harassment, as explained on the [corresponding NOAA Fisheries webpage](https://www.fisheries.noaa.gov/feature-story/keeping-fishery-observers-safe-harassment) (<https://www.fisheries.noaa.gov/feature-story/keeping-fishery-observers-safe-harassment>).

Lastly, the MFC also has authority for the sanitation requirements for harvesting, processing, and handling of scallops, shellfish, and crustaceans of in-state origin and those shipped into the state. It is equally important for the DMF to be able to obtain data for the protection of public health related to the public health programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

II. Purpose of Rule Change

Due to the increasing occurrence and severity of harassment and decreasing participation in DMF data collection initiatives, amendments are proposed to several MFC rules. The amendments add requirements to broaden and enhance protections for DMF employees from harassment that could occur in the process of obtaining data about fishing activity. The amendments also broaden the applicability of the requirements beyond fish in the licensee's possession by including anyone engaged in these regulated activities. Proposed amendments also list the types of data that may be collected. A detailed description of the changes proposed to each affected rule follows. The rules are provided in Appendix I for reference.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION

Proposed amendments to 15A NCAC 03I .0113 would set requirements to address harassment by any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) of DMF employees that occurs in the process of obtaining data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments would provide the types of data that may be collected. The amendments would support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees.

Specifically, language is proposed to define a "responsible person" to expand the applicability of the rule to other persons involved in regulated fishing activity, not just licensees. Adding "responsible person" to the rule would close a loophole that currently allows anglers who fish under a blanket license, such as the Ocean Fishing Pier License or one of the for-hire blanket licenses, to refuse to participate in data collection initiatives, so that they could be subject to prosecution by Marine Patrol for offenses. The changes would also allow Marine Patrol to prosecute mates or other non-licensed employees engaged in a for-hire operation if they interfere with DMF sampling efforts. Amendments to this rule would also broaden the requirements to apply to all participants, commercial and recreational. Doing so would equalize the expectations across sectors; currently, the requirements addressing harassment related to data collection only exist in the special conditions of commercial, DMF-issued permits.

Proposed language to be added to 15A NCAC 03I .0113 to protect DMF employees collecting data is adapted from requirements about harassment to protect federal samplers identified in the CFR (50 CFR § 600.725(o), (t), and (u)). While the CFR applies broadly to "any person," the proposed rule change would apply to licensees, permittees, and those engaged in regulated activity (e.g., fishing). Subchapter IV of Chapter 113 is the "Conservation of Marine and Estuarine and Wildlife Resources". These laws set requirements for the conservation of marine and estuarine resources. There are currently individuals that participate in taking these resources that are not required to hold a permit or license but, per G.S. 113-181, are included in the Department of Environmental Quality's duty to collect data in support of the conservation of marine and estuarine resources. Examples include individuals fishing under a blanket license, such as the Ocean Fishing Pier License or one of the for-hire blanket licenses, as well as mates or other employees working in a for-hire operation that are not permitted or licensed. Proposed changes to 15A NCAC 03I .0113 and the other supporting rules in the fiscal analysis expand the scope of the rules to match the data collection authority per G.S. 113-181.

The proposed amendments to the rule would provide the ability to prosecute offenders, regardless of whether they hold a license or permit and regardless of sector. Holding all stakeholders accountable for harassment of DMF employees while they perform their job duties should contribute to reducing the number of harassment cases in the future. This requirement would also provide a sense of security to DMF employees in knowing that MFC rules can potentially deter hostile or offensive interactions while they perform their duties regardless of the setting (e.g., in the office, at a fishing dock, or on the water). The only exception to incorporation of the language from 50 CFR § 600.725(o), (t), and (u) is for "assault", which for Marine Patrol is handled under separate statutory authority.

Regarding data collection, the title of Rule 15A NCAC 03I .0113 is proposed to be changed from "Biological Sampling" to "Data Collection" because DMF collects more than just biological data from stakeholders. For example, data such as residential location and fishing effort, and social and economic data of participants are just a few data points that are collected by DMF employees that do not explicitly fall under the biological sampling umbrella but fall under the DMF's authority. Changing the title of the rule is consistent with clarifying the authority for and increasing the support to collect more overarching fisheries data to better inform fisheries

managers about the fishing activities in N.C. marine and estuarine waters for the conservation of those resources. Changes are also proposed to the body of the rule to list in detail the types of data that may be collected. The list is not intended to be exhaustive, but rather to more accurately characterize the types of data needed for DMF statistics and surveys, Endangered Species Act Section 10 Incidental Take Permit reports, and the protection of public health for programs that fall under the authority of the MFC, which are ultimately for the conservation of marine and estuarine resources.

As discussed, proposed changes to 15A NCAC 03I .0113 include defining "responsible person" to expand the applicability of the rule to other persons involved in regulated fishing activity, not just licensees. In Rule 15A NCAC 03I .0101(5)(l), a "responsible party" is defined as the "person who coordinates, supervises, or otherwise directs operations of a business entity, such as corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules". This definition does not capture all participants within certain fishing activities, particularly in for-hire fishing trips. "Responsible party" is used to identify one specific entity that will be held accountable for any requirements pertaining to a license. "Responsible person" can be used to include multiple entities that partake in regulated fishing activity but are not a license holder or a designated representative of the license. A for-hire deckhand, mate, fish cleaner, and customer would be considered a responsible person but would not be considered a responsible party because none of these individuals are required to be a license holder. "Responsible party" is defined in rule to be used more broadly over a larger set of rules, whereas "responsible person" would only apply to Rule 15A NCAC 03I .0113 and Rule 15A NCAC 03O .0112 (described below). Because of these slight differences between "responsible person" and "responsible party", other related rules were evaluated to determine if additional changes are necessary to incorporate all intended participants.

15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS

Rule 15A NCAC 03O .0112 titled "For-Hire License Requirements" currently includes requirements for participation by the for-hire vessel operator in data collection efforts by DMF. Because the paying customers on the for-hire trip are also the anglers participating in the fishing activity, the customers are the individuals that get interviewed by MRIP samplers. Therefore, the customer should be included in the definition of the "responsible person" and added to the rule in addition to the "for-hire vessel operator". Not only would "responsible person" require for-hire customers to participate in data collection, but it would also include other people, such as mates, fish cleaners, or other employees, that contribute to the for-hire fishing experience.

15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE

15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL GEAR LICENSES

Rules 15A NCAC 03O .0101, .0109, and .0301 set requirements for a holder of a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License, an assignee of a SCFL, and a holder of a Recreational Commercial Gear License, respectively. Each of these rules contains proposed changes to link the licensee or assignee to the requirements proposed in 15A NCAC 03I .0113 for harassment and data collection. These changes would ensure that all licensed participants are subject to the same requirements, regardless of license type.

III. Economic Impact Summary

The proposed rule amendments will help DMF more optimally fulfill its duties of collecting data on regulated fishing activity from all participants for the conservation of marine and estuarine resources and ensure its employees can perform their job functions in an environment that is both physically safe and free from unlawful harassment. Providing clear data collection requirements and protections for DMF employees fulfills DMF's responsibility as a management agency and an employer. Proposed changes give clarity about the data collection requirements and consequences of unlawfully harassing a DMF employee to ensure stakeholders have comprehensive requirements in rule. Though the proposed rule changes provide clear benefits to the marine and estuarine resources and DMF employees, these benefits are unquantifiable.

The proposed rule amendments may result in small costs to persons participating in regulated fishing activity in the form of time spent interacting with DMF employees participating in data collection processes. As compared to the regulatory baseline, these rule amendments will only result in new time costs to persons who would have otherwise refused to participate in data collection processes.

In addition, persons who withhold data and information from DMF employees or who harass DMF employees while they perform their job functions could incur costs in the form of fines, legal fees, and/or suspension or revocation of permits and licenses. Pursuant to G.S. 15A-1340.23, the fines could range from \$35 to \$200, not including the cost of court time, which is \$183 as of March 2023 as described in G.S. 7A-304(a). Suspension or revocation of a license occurs for conviction of a criminal offense as set forth in G.S. 113-171 and 15A NCAC 03O .0114. Suspension or revocation of a permit occurs for violation of permit conditions as set forth in 15A NCAC 03O .0504. Such permit conditions can include refusal to allow the Fisheries Director or their agents to obtain biological data, harvest information, or other data necessary or useful to the conservation and management of marine and estuarine resources for the taking of fish, or harassing these agents while they perform their job functions.

There have been three documented incidents between April 2021 and March 2023 in which these types of costs could have been incurred if the proposed rule changes were already in place. DMF cannot predict how frequently these incidents will occur in the future, but DMF expects that they will continue to be relatively infrequent. These costs would be easily avoided by complying with requirements to participate in data collection.

Although not quantifiable, the costs associated with the proposed rule changes will be outweighed by the benefits to the state's marine and estuarine resources, fishery management, DMF employees, and stakeholders.

1 **APPENDIX I.**

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3 15A NCAC 03I .0113 is proposed for amendment as follows:

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5 **15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION**

6 (a) For the purpose of this Rule, "responsible person" shall mean any licensee or person engaged in regulated activity
7 under Chapter 113, Subchapter IV, of the General Statutes.

8 (b) It shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes responsible person
9 to refuse to allow the Fisheries Director or the Fisheries Director's agents to obtain biological data, harvest information,
10 or other ~~statistical~~ data necessary or useful to the conservation and management of marine and estuarine resources
11 from for the taking of fish in the licensee's possession by the responsible person. Such data shall include, but is not
12 limited to, may include:

- 13 (1) species ~~identification,~~ identification;
- 14 (2) species ~~length,~~ length;
- 15 (3) species ~~weight,~~ weight;
- 16 (4) species ~~age,~~ age;
- 17 (5) species ~~sex,~~ sex;
- 18 (6) ~~number,~~ number of species;
- 19 (7) quantity of catch;
- 20 (8) area of ~~catch,~~ catch;
- 21 (9) harvest ~~method, and of quantity catch,~~ method;
- 22 (10) gear and gear specifications;
- 23 (11) target species;
- 24 (12) number of hours and days the responsible person spent fishing;
- 25 (13) state, county, and zip code of responsible person;
- 26 (14) number of individuals fishing with responsible person; and
- 27 (15) social and economic data, including fishing expenditures.

28 (c) It shall be unlawful for any responsible person to refuse to allow the Fisheries Director or the Fisheries Director's
29 agents to obtain data for the protection of public health related to the public health programs that fall under the
30 authority of the Marine Fisheries Commission.

31 (d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents
32 in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment
33 or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(o),
34 (t), and (u), including to:

- 35 (1) harass;
- 36 (2) sexually harass, including making sexual connotations;
- 37 (3) oppose;

- 1 (4) impede;
- 2 (5) intimidate;
- 3 (6) interfere;
- 4 (7) prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable
- 5 assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties;
- 6 or
- 7 (8) tamper with or destroy samples or equipment;

8 50 CFR 600.725(o), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including

9 subsequent amendments and editions. A copy of the reference material can be found at

10 <https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>, at no cost.

11 (e) Exceptions to 50 CFR 600.725(t) include "assault".

12

13 *History Note: Authority G.S. 113-134; 113-170.3; 113-174.1; 113-181; 113-182; 113-221.2; 143B-289.52;*

14 *Eff. October 1, 1992;*

15 *Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996;*

16 *Readopted Eff. March 15, ~~2023~~ 2023;*

17 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0101 is proposed for amendment as follows:
2

3 **SUBCHAPTER 03O - LICENSES, LEASES, FRANCHISES, AND PERMITS**
4

5 **SECTION .0100 - LICENSES**
6

7 **15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES,**
8 **ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

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

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

14 (c) To obtain Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, a
15 licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted
16 without complete and required information shall not be processed until all required information has been submitted.
17 Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following
18 shall be required for the application:

- 19 (1) full name, physical address, mailing address, date of birth, and signature of the licensee. If the
20 licensee is not appearing before a license agent or a representative of the Division, the licensee's
21 signature shall be notarized.
- 22 (2) a statement from the licensee that the information and supporting documentation submitted with the
23 application is true and correct.
- 24 (3) current and valid picture identification of the licensee. Acceptable forms of picture identification
25 are state driver's license, state identification card issued by the Division of Motor Vehicles, military
26 identification card, resident alien card (green card), or passport; or if purchased by mail, a copy
27 thereof.
- 28 (4) certification that the applicant does not have four or more marine or estuarine resource convictions
29 during the previous three years.
- 30 (5) current articles of incorporation and a current list of corporate officers when purchasing a license or
31 Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an
32 individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall
33 notify the Morehead City Office of the Division within five days of changing the vessel master.
- 34 (6) a current copy of a written partnership agreement shall be provided when purchasing a license,
35 endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is
36 established.

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

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

7 (d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be
8 documented by the licensee with certification of the state of residency. Proof of residency for residents of North
9 Carolina shall be documented by the licensee as follows:

10 (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the
11 applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4)
12 and:

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

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

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

20 (2) All other types of licenses:

21 (A) North Carolina voter registration card;

22 (B) current North Carolina Driver's License;

23 (C) current North Carolina Certificate of Domicile;

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

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

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

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

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

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

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

37 (3) Fish Dealer License:

- 1 (A) the physical address of the established location where business is conducted and, if
- 2 different, the address where records are kept; and
- 3 (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries
- 4 Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer
- 5 License with clam or oyster categories or a consolidated license.
- 6 (4) Land or Sell License:
- 7 (A) valid documentation papers or current motor boat registration, or copy thereof; or
- 8 (B) a copy of the pending application and a notarized bill of sale if an application for transfer
- 9 of documentation is pending.

10 The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation
 11 papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

- 12 (5) Ocean Fishing Pier License:
- 13 (A) the information required in G.S. 113-169.4; and
- 14 (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the
- 15 linear length of the pier before the license can be issued.
- 16 (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.
- 17 (7) Spotter Plane License:
- 18 (A) the information required in G.S. 113-171.1;
- 19 (B) the current aircraft registration; and
- 20 (C) a list of operators.

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

- 23 (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through
- 24 June 30 of the following year.
- 25 (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
- 26 (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each
- 27 year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license
- 28 years for which the person had a vessel that was licensed to land in North Carolina;
- 29 (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-
- 30 94, or 1994-95 license years; and
- 31 (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or
- 32 Sell License.
- 33 (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean
- 34 than the number of vessels that the person owns that individually met the eligibility requirements of
- 35 Parts (f)(2)(A) and (f)(2)(B) of this Rule.
- 36 (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel
- 37 specified at the time of license issuance.

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

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

7 (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year.

8 (g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and
9 (d) of this Rule, the following shall be applicable:

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

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

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

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

22 (i) If requested by the Division, it shall be unlawful for a licensee to fail to participate in and provide accurate
23 information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by
24 the Division.

25
26 *History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182;*
27 *143B-289.52;*

28 *Eff. January 1, 1991;*

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

30 *Temporary Amendment Eff. July 1, 1999;*

31 *Amended Eff. August 1, 2000;*

32 *Temporary Amendment Eff. April 1, 2001;*

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

34 *Readopted Eff. March 15, ~~2023~~ 2023;*

35 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0109 is proposed for amendment as follows:
2

3 **15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**

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

7 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a licensee or assignee to fail to participate
8 in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey
9 programs administered by the Division.

10 ~~(b)(c)~~ The Division of Marine Fisheries shall provide assignment forms to the licensee upon request. Only Division
11 assignment forms shall be used to obtain an assignment. On the assignment form, the licensee shall designate what, if
12 any, endorsements are included in the assignment. Endorsements shall not be assigned independent of the Standard
13 Commercial Fishing License. It shall be unlawful for the licensee or the assignee to fail to submit within five days the
14 completed assignment form to any office of the Division in person or by mail to the Morehead City Office. The
15 Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed
16 assignment form is not received by the Division within five days from the date it was signed, the assignment shall be
17 null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment
18 is in effect from the date specified on the assignment form and when:

- 19 (1) the assignment form is complete with all required information;
20 (2) signatures of the current license holder and the assignee are notarized; and
21 (3) the assignee has in the assignee's possession the current licensee's original actual Standard
22 Commercial Fishing License, including applicable endorsements in accordance with G.S. 113-
23 169.2.

24 ~~(e)(d)~~ For an extension of time for assignments, a new assignment form shall be completed in accordance with
25 Subparagraphs (b)(1) through (b)(3) of this Rule.

26 ~~(d)(c)~~ Assignments shall terminate:

- 27 (1) when the date specified on the assignment form is reached;
28 (2) if the licensee or assignee are determined ineligible for a license or assignment;
29 (3) if the Division receives a notarized statement from the current license holder stating a revised date
30 for an earlier assignment termination;
31 (4) upon the licensee or assignee's death; or
32 (5) when the Standard Commercial Fishing License expires.

33 ~~(e)(f)~~ It shall be unlawful for an individual assigned a Standard Commercial Fishing License when involved in a
34 commercial fishing operation to fail to have the original actual Standard Commercial Fishing License, any assigned
35 endorsements, and a copy of the assignment form in the individual's possession ready at hand for inspection in
36 accordance with G.S. 113-168.1.

37 ~~(f)(g)~~ All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.

1 ~~(e)~~(h) It shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time.
2 It shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time.
3 Assignments shall only be made by the licensee and shall not be further assigned by assignees. Masters identified on
4 the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel shall not assign
5 such licenses.

6 ~~(h)~~(i) It shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they
7 are ineligible.

8 ~~(i)~~(j) It shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and
9 the Standard Commercial Fishing License with any assigned endorsements to the licensee within five days of notice
10 that the assignment has been terminated or a demand by the licensee to return the license.

11
12 *History Note: Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187;*
13 *143B-289.52;*
14 *Eff. January 1, 1991;*
15 *Temporary Amendment Eff. October 2, 1999; July 1, 1999;*
16 *Amended Eff. August 1, 2000;*
17 *Readopted Eff. March 15, ~~2023~~, 2023;*
18 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0112 is proposed for amendment as follows:

2

3 **15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS**

4 (a) The license requirements for an operator of a vessel engaged in a for-hire operation are set forth in G.S. 113-174.3.
5 Either the vessel owner or the for-hire vessel operator may seek to obtain the applicable for-hire vessel license. Only
6 the vessel owner shall seek to obtain the applicable registration and endorsement required by G.S. 113-168.6. For the
7 purpose of this Rule, "for-hire vessel operator" shall include the holder of a Blanket For-Hire Captain's Coastal
8 Recreational Fishing License, Blanket For-Hire Vessel Coastal Recreational Fishing License, or Non-Blanket For-
9 Hire Vessel License, as set forth in G.S. 113-174.3.

10 (b) It shall be unlawful for a for-hire vessel operator to operate without:

- 11 (1) holding the United States Coast Guard certification required in Rule .0101(a) of this Section;
- 12 (2) having a copy of the for-hire license in possession and ready at hand for inspection; and
- 13 (3) having current picture identification in possession and ready at hand for inspection.

14 (c) If requested by the Division of Marine Fisheries, it shall be unlawful for a for-hire vessel operator or responsible
15 person to fail to participate in and provide accurate information for ~~biological sampling data collection~~ in accordance
16 with 15A NCAC 03I .0113 and for survey programs administered by the Division. For the purpose of this Rule,
17 "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter 113, Subchapter
18 IV, of the General Statutes, including regulated activity related to for-hire fishing.

19 (d) Requirements for display of licenses and registrations for a vessel engaged in for-hire recreational fishing are set
20 forth in Rule .0106 of this Section.

21

22 *History Note: Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 113-181; 143B-289.52;*

23 *Eff. July 1, 2008;*

24 *Readopted Eff. April 1, ~~2019-2019~~;*

25 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0301 is proposed for amendment as follows:
2

3 **SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES**
4

5 **15A NCAC 03O .0301 ELIGIBILITY AND REQUIREMENTS FOR RECREATIONAL COMMERCIAL**
6 **GEAR LICENSES**

7 (a) Recreational Commercial Gear Licenses shall only be issued to individuals.

8 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a Recreational Commercial Gear License
9 holder to fail to participate in and provide accurate information for data collection in accordance with 15A NCAC 03I
10 .0113 and for survey programs administered by the Division.
11

12 *History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;*
13 *Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule*
14 *becomes effective, whichever is sooner;*
15 *Eff. February 1, 1995;*
16 *Temporary Amendment Eff. July 1, 1999;*
17 *Amended Eff. August 1, 2000;*
18 *Readopted Eff. March 15, ~~2023~~, 2023;*
19 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*