

Fiscal Impact Analysis of Proposed Conforming Rule Changes for Shellfish Relay Program and Shellfish Leases and Franchises

Rule Amendments: 15A NCAC 03I .0101, 03K .0101, .0104, .0301, .0401, .0403, .0405, .03O .0201, .0501, .0503, 18A .0901, .0906

Name of Commission: N.C. Marine Fisheries Commission

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

AUTHORITY

N.C. General Statutes

G.S. § 14-4.1.	Legislative review of regulatory crimes.
G.S. § 113-134.	Rules.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
G.S. § 113-202.	New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
G.S. § 113-203.	Transplanting of oysters and clams.
G.S. § 113-221.2.	Additional rules to establish sanitation requirements for scallops, shellfish, and crustacea; permits and permit fees authorized.
G.S. § 143B-289.52.	Marine Fisheries Commission – powers and duties.
Chapter 150B	Administrative Procedure Act

Necessity: According to the Administrative Procedure Act (APA), specifically G.S. § 150B-19.1(b), the Marine Fisheries Commission (MFC) is charged with reviewing its rules annually to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. § 150B-19.1(a). The Division of Marine Fisheries (DMF) identified 11 rules relating to the Shellfish Relay Program (15A NCAC 03I .0101, 03K .0101, .0104, .0301, .0401, .0403, .0405, 03O .0501, .0503, 18A .0901, and .0906) that set specific requirements for relaying of shellfish from certain polluted areas. Consistent with the APA, these rules or portions of these rules are unnecessary due to the discontinuation of the Shellfish Relay Program. Additional proposed changes to 15A NCAC 03O .0201 for shellfish lease and franchise ("lease") requirements are proposed pursuant to Session Law 2019-37 (Act to Provide Further Support to

the Shellfish Aquaculture Industry in North Carolina) for increased production and planting requirements for leases via Section 3 of the Act. Subsection 3 (d) of the Act requires the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3 (c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019 and after. Changes are proposed to conform this rule to the requirements of this law.

I. Summary

In 2021, the DMF began the process of discontinuing its Shellfish Relay Program (relaying of shellfish from certain polluted areas) due primarily to insufficient resources to run the program and lack of widespread use. The Shellfish Relay Program will end effective May 1, 2024. The MFC received information about the discontinuation of the Shellfish Relay Program at its February 2022 business meeting, including the need to undertake conforming rule changes.

DMF identified 11 rules relating to the Shellfish Relay Program that set specific requirements for relaying of shellfish from certain polluted areas. Changes are proposed to amend portions of rules or repeal rules consistent with rulemaking requirements in the APA. Additional proposed changes to 15A NCAC 03O .0201 conform lease requirements to Session Law 2019-37, Section 3. Please see Appendix I for the 12 proposed rules.

II. Introduction and Purpose of Rule Changes

Shellfish Relay Requirements

Amendments are proposed to rules that have shellfish relay requirements, including the repeal of **15A NCAC 03K .0104, .0401, .0403, and .0405.**

Rule **15A NCAC 03I .0101** defines terms that apply globally to Chapter 03 (Marine Fisheries) of the N.C. Administrative Code. Specifically, Subitems (2)(i), (2)(j), and (2)(k) of this rule define terms related to leases and the associated planting, culture, marketing, transplanting (relay), and harvest of shellfish. These defined terms only appear in 15A NCAC 03O .0200, which sets standards and requirements for leases. These terms are proposed to be deleted from 15A NCAC 03I .0101; globally applicable definitions for these terms are not necessary. There are a few differences in statutes and rules for shellfish production as it pertains to leases. As a result, definitions are proposed to be added to 15A NCAC 03O .0201 to harmonize these differences, defined for the purpose of this section of rules. These changes are explained in the associated subsection of the discussion section further below. An unrelated conforming change is proposed to 15A NCAC 03I .0101(5)(g) to provide an exception to 15A NCAC 03O .0109 for the defined term "licensee". Additionally, a technical change is proposed to 15A NCAC 03I .0101(5)(k) to remove Elizabeth City from the definition of "Office of the Division" since the license office there is permanently closed; the remaining offices are also proposed to be listed in geographic order from south to north.

Rule **15A NCAC 03K .0101** makes it unlawful to take shellfish from areas that have been designated as polluted. The current rule provides exceptions as set out in four other rules that contain shellfish relay requirements. These rules were recently amended to remove shellfish relay requirements (15A NCAC 03K .0103, .0107) or are rules described here that are proposed to be repealed (15A NCAC 03K .0104, .0401), and thus the exceptions need to be removed from 15A NCAC 03K .0101. Additional proposed changes to 15A NCAC 03K .0101 update and consolidate the exceptions to this otherwise unlawful activity by using permit names instead of rule references. These exceptions apply to the holder of any of three existing permits: Depuration, Aquaculture Seed Transplant, or Shellfish Relocation. Requirements for these permits ensure shellfish taken from polluted areas are not for immediate human consumption but are for restoration purposes or would be subject to transplant to private beds for growout or for depuration prior to human consumption. Using the permit names will be easier for stakeholders to identify than using rule references.

15A NCAC 03K .0301 contains proposed changes to remove shellfish relay requirements by deleting Subparagraph (b)(3).

Proposed changes to **15A NCAC 03O .0501** Paragraphs (d) and (e), **15A NCAC 03O .0503** Subparagraph (a)(3), **15A NCAC 18A .0901** Item (19), and **15A NCAC 18A .0906** Paragraph (b) remove shellfish relay requirements. Additionally, two unrelated technical changes are needed. One change is needed to 15A NCAC 03O .0501(i) to correct a cross-reference to 15A NCAC 03K .0111 (recent repeal), to reference 15A NCAC 03O .0211 (recent adoption) instead. A second technical change is needed to 15A NCAC 03O .0503 to correct a cross-reference in Subparagraph (g)(3) to read "Subparagraph (g)(1)" not "Subparagraph (k)(1)".

Shellfish Lease and Franchise Requirements

Regarding additional proposed changes to 15A NCAC 03O .0201 for lease requirements, Session Law 2019-37 (Act to Provide Further Support to the Shellfish Aquaculture Industry in North Carolina) increased production and planting requirements for leases via Section 3 of the Act. Subsection 3 (d) of the Act requires the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3 (c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019 and after. Changes are proposed to conform this rule to the requirements of this law.

Specifically, definitions for "extensive shellfish culture" and "intensive shellfish culture" set forth in Session Law 2019-37 are proposed to be added for the purpose of 15A NCAC 03O .0200 in Rule 15A NCAC 03O .0201 in Paragraph (a). Upon the effective date of this rule, Section 3 of this law will expire and so the definitions need to be added to MFC rule. Additional definitions for "plant" and "produce" are proposed to clarify the use of the terms for the purpose of this Section of rules. There are a few differences in statutes and rules for shellfish production as it pertains to shellfish leases and franchises, as mentioned in the "Shellfish Relay Requirements" section above regarding 15A NCAC 03I .0101. Session Law 2019-37, G.S. 113-202, G.S. 113-203, and other laws contain requirements for and intersect with shellfish relay and leases. The proposed definitions harmonize these differences, along with conforming changes throughout the rule to delete references to "marketing" shellfish. The term is antiquated and essentially means "harvest", which is remedied by the proposed definitions. Also, as a result of separate rule changes that

became effective June 1, 2022, all lease holders are required to have an Aquaculture Operation Permit (AOP). This makes moot the need to retain the reference to a "marketable size" because requirements are now set through the AOP; there are not currently any minimum size requirements and there is not a "marketable size" definition beyond the three-inch minimum size limit for wild harvest (versus harvest from a lease). So, in Paragraph (a), the proposed definition for "plant" in (a)(3) is consistent with Session Law 2019-37 and G.S. 113-202 and covers 15A NCAC 03I .0101(2)(j) for "shellfish planting effort on leases and franchises" and (2)(k) for "shellfish production on leases and franchises", except "sublegal harvest size to a marketable size" from 03I .0101(2)(k)(i) was left out because it does not align with how the industry works today now that all lease holders are required to have an AOP. The proposed definition for "produce" in (a)(4) is consistent with Session Law 2019-37 and G.S. 113-202 and covers 15A NCAC 03I .0101(2)(i) for "shellfish marketing from leases and franchises".

Subparagraph (b)(4) is proposed for amendment to clarify to what "area" refers. Proposed changes and additions to Paragraphs (c) through (h) incorporate and conform the shellfish production and planting requirements from the law for leases granted before July 1, 2019 and for leases granted on or after this date. Leases are granted for 10-year terms, so these distinctions will need to persist in the rule until the last lease granted prior to July 1, 2019 has expired at which time the rule can be amended again. Lastly, proposed changes to Paragraph (i) require lease holders to meet the listed production, marking, and permit requirements for current leases before being eligible for additional lease acreage. Doing so would help ensure more efficient and meaningful use of the public trust bottom by preventing persons that do not meet the requirements of the MFC rules referenced in 15A NCAC 03O .0201(i) from precluding potential applicants from applying for a lease in affected areas.

The Public Trust Doctrine provides the authority for the state to manage public trust resources. The doctrine states that "public trust lands, water, and living resources in the state are held by the state in trust for the benefit of all the people, and establishes the right of the public to fully enjoy public trust lands, waters, and living resources for a wide variety of recognized public uses. " Consistent with the Public Trust Doctrine, in G.S. 113-201 the "General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also clarifies that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation." Further, the General Assembly empowers the MFC to "make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds." The proposed changes are consistent with this charge.

III. Fiscal Analysis

Shellfish Relay Requirements

The proposed rule changes are in response to the decision by DMF to discontinue the Shellfish Relay Program due to lack of resources to run the program and lack of widespread use. The program will end effective May 1, 2024. Proposed rule changes themselves will not result in the discontinuation of the relay program; rather, they will reflect the discontinuation of the program already underway. There is not expected to be any economic impact to the state or stakeholders through the proposed changes to these rules due to the rules not impacting any stakeholder practice nor DMF employee job function when the proposed rule amendments would become effective.

Shellfish Lease and Franchise Requirements

Most of the proposed changes conform 15A NCAC 03O .0201 to the requirements of Session Law 2019-37, consistent with G.S. 113-202. As compared to the regulatory baseline, these proposed amendments will not require any procedural changes and should not result in any additional costs to the state.

Proposed changes to Paragraph (i) would require lease holders to meet the listed production, marking, and permit requirements for current leases of any size before being eligible for additional lease acreage, regardless of acreage of current leases they hold. Doing so would help ensure more efficient and meaningful use of the public trust bottom. The current rule contains a requirement that has been in place since 2008 for existing lease holders that hold *five or more* acres to meet the shellfish *production* requirements in order to *submit* an application for additional lease acreage. Proposed changes would require existing lease holders that hold *any* acres to meet shellfish production, *marking, and permit* requirements to be *eligible* for additional lease acreage. The proposed changes reflect the MFC's authority to not grant additional acreage to persons not using the public trust resource in a manner that is at least at the minimum standards, versus requirements for submitting an application. The expansion from five or more acres to any acres is also consistent with more efficient and meaningful use of the public trust bottom but is not expected to increase the existing responsibilities of DMF employees.

Limiting access to additional leases to individuals found out of compliance with their existing lease could provide small costs to those lease holders. There are currently 195 lease holders holding approximately 2,221 acres of public trust bottom. The number of leases that are applied for each year has increased over time and there were 43 lease applications in 2022. Of those 43 lease applications 20 were existing active lease holders; of those 20 applicants, eleven were under the five-acre limit and would potentially interact with the proposed rule change. As the aquaculture industry grows, applications are expected to also increase. Moving forward, the number of stakeholders that would be subject to this rule change is unknown but expected to grow. Proposed amendments could lead to denial of future lease applications for active lease holders that are not meeting requirements of MFC rules referenced in 15A NCAC 03O .0201(i).

Though small unquantifiable costs to out of compliance lease holders may occur, ensuring lease areas are being used for their allowed activity, as approved by the DMF, consistent with the public trust doctrine and state laws and rules, is expected to be a larger, yet unquantifiable, benefit of using public trust resources that provide long term economic and employment opportunities, water filtration, and support estuarine habitat. Under the proposed rule change the ability to ensure applicants who are not in compliance with their current lease are denied access

to more public trust bottom allows other applicants to use the public trust resource for its intended purpose as described in Section II of this analysis. Overall, proposed amendments to shellfish lease and franchise requirement rules that limit access to new leases for out of compliance stakeholders and clarify definitions are expected to bring small but unquantifiable benefits to both the state and stakeholders.

For this rule package, bringing harmony between terms in rule and law brings consistency and clarity of terms, which is expected to increase efficiency and clarity for DMF staff and stakeholders. No impact to local governments is expected.

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

2
3 **SUBCHAPTER 03I – GENERAL RULES**

4
5 **SECTION .0100 – GENERAL RULES**

6
7 **15A NCAC 03I .0101 DEFINITIONS**

8 All definitions set out in G.S. 113, Subchapter IV and the following additional terms shall apply to this Chapter:

9 (1) enforcement and management terms:

- 10 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial
11 fishing operations.
- 12 (b) "Educational institution" means a college, university, or community college accredited by
13 an accrediting agency recognized by the U.S. Department of Education; an Environmental
14 Education Center certified by the N.C. Department of Environmental Quality Office of
15 Environmental Education and Public Affairs; or a zoo or aquarium certified by the
16 Association of Zoos and Aquariums.
- 17 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except
18 the Atlantic Ocean.
- 19 (d) length of finfish:
- 20 (i) "Curved fork length" means a length determined by measuring along a line tracing
21 the contour of the body from the tip of the upper jaw to the middle of the fork in
22 the caudal (tail) fin.
- 23 (ii) "Fork length" means a length determined by measuring along a straight line the
24 distance from the tip of the snout with the mouth closed to the middle of the fork
25 in the caudal (tail) fin, except that fork length for billfish is measured from the tip
26 of the lower jaw to the middle of the fork of the caudal (tail) fin.
- 27 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal
28 insertion of the pectoral fin to the fork of the tail measured along the contour of
29 the body in a line that runs along the top of the pectoral fin and the top of the
30 caudal keel.
- 31 (iv) "Total length" means a length determined by measuring along a straight line the
32 distance from the tip of the snout with the mouth closed to the tip of the
33 compressed caudal (tail) fin.
- 34 (e) "Nongovernmental conservation organization" means an organization whose primary
35 mission is the conservation of natural resources.
- 36 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:

- 1 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
2 or deleterious substances, or marine biotoxins that render the consumption of
3 shellfish from those growing waters hazardous;
- 4 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
5 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
6 outfall with public health significance;
- 7 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
8 18A .0901 to be in or adjacent to a marina;
- 9 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
10 18A .0901 to be impacted by other potential sources of pollution that render the
11 consumption of shellfish from those growing waters hazardous; or
- 12 (v) where the Division of Marine Fisheries is unable to complete the monitoring
13 necessary to determine the presence of contamination or potential pollution
14 sources.
- 15 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
16 area, means, and methods where take or possession is for a recreational purpose.
- 17 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
18 purpose.
- 19 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
20 the Fisheries Director through proclamation authority.
- 21 (j) "Scientific institution" means one of the following entities:
- 22 (i) an educational institution as defined in this Item;
- 23 (ii) a state or federal agency charged with the management of marine or estuarine
24 resources; or
- 25 (iii) a professional organization or secondary school working under the direction of,
26 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
27 of this Item.
- 28 (2) fishing activities:
- 29 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
30 marine or estuarine resources, or other non-native species that may thrive if introduced into
31 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
32 rearing on private bottom (with or without the superadjacent water column) or in a
33 controlled environment. A controlled environment provides and maintains throughout the
34 rearing process one or more of the following:
- 35 (i) food;
- 36 (ii) predator protection;
- 37 (iii) salinity;

- 1 (iv) temperature controls; or
2 (v) water circulation, utilizing technology not found in the natural environment.
- 3 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
4 to work the gear and be within 100 yards of any gear in use by that person at all times.
5 Attended does not include being in a building or structure.
- 6 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
7 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
8 controlled environment. A controlled environment provides and maintains throughout the
9 shedding process one or more of the following:
10 (i) food;
11 (ii) predator protection;
12 (iii) salinity;
13 (iv) temperature controls; or
14 (v) water circulation, utilizing technology not found in the natural environment. A
15 shedding operation does not include transporting pink or red-line peeler crabs to
16 a permitted shedding operation.
- 17 (d) "Depuration" means mechanical purification or the removal of adulteration from live
18 oysters, clams, or mussels by any artificially controlled means.
- 19 (e) "Long haul operation" means fishing a seine towed between two vessels.
- 20 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
21 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 22 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
23 not.
- 24 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
25 as defined in G.S. 113-168.
- 26 ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams,~~
27 ~~scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish~~
28 ~~to the public at large or to a licensed shellfish dealer.~~
- 29 ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining~~
30 ~~authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and~~
31 ~~the placement of those materials on privately held shellfish bottoms for increased shellfish~~
32 ~~production.~~
- 33 ~~(k) "Shellfish production on leases and franchises" means:~~
34 ~~(i) the culture of oysters, clams, scallops, or mussels on shellfish leases and~~
35 ~~franchises from a sublegal harvest size to a marketable size.~~

- 1 (ii) ~~the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed~~
2 ~~due to pollution to shellfish leases and franchises in open waters and the natural~~
3 ~~cleansing of those shellfish.~~
- 4 ~~(i)~~ "Swipe net operations" means fishing a seine towed by one vessel.
- 5 ~~(m)~~~~(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private
6 carrier by land, sea, or air.
- 7 ~~(n)~~~~(k)~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- 8 (3) gear:
- 9 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed
10 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch
11 is dipped or bailed.
- 12 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom
13 at both ends or with one end anchored or attached to the bottom and the other end attached
14 to a vessel.
- 15 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal
16 Fishing Waters except:
- 17 (i) cast nets;
- 18 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension
19 no larger than 18 inches and that by design is collapsed at all times when in the
20 water, except when it is being retrieved from or lowered to the bottom;
- 21 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop
22 or frame to which the net is attached not exceeding 60 inches along the perimeter;
- 23 (iv) gigs or other pointed implements that are propelled by hand, whether or not the
24 implement remains in the hand;
- 25 (v) hand operated rakes no more than 12 inches wide and weighing no more than six
26 pounds and hand operated tongs;
- 27 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-
28 bait trotline;
- 29 (vii) landing nets used to assist in taking fish when the initial and primary method of
30 taking is by the use of hook and line;
- 31 (viii) minnow traps when no more than two are in use;
- 32 (ix) seines less than 30 feet in length;
- 33 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by
34 mechanical means, including elastic tubing or bands, pressurized gas, or similar
35 means.
- 36 (d) "Corkline" means the support structure a net is attached to that is nearest to the water
37 surface when in use. Corkline length is measured from the outer most mesh knot at one end

- 1 of the corkline following along the line to the outer most mesh knot at the opposite end of
2 the corkline.
- 3 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth
4 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 5 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure
6 attached to the bottom, at both ends of the net.
- 7 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or
8 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one
9 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,
10 through which fish enter the enclosure. The portion of the net designed to hold or trap fish
11 is completely enclosed in mesh or webbing, except for the openings for fish passage into
12 or out of the net (funnel area).
- 13 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills
14 in its mesh as a result of net design, construction, mesh length, webbing diameter, or
15 method in which it is used.
- 16 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest
17 to the water surface when in use. Headrope length is measured from the outer most mesh
18 knot at one end of the headrope following along the line to the outer most mesh knot at the
19 opposite end of the headrope.
- 20 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or
21 frames. The net has one or more internal funnel-shaped openings with tapered ends directed
22 inward from the mouth, through which fish enter the enclosure. The portion of the net
23 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the
24 openings for fish passage into or out of the net (funnel area).
- 25 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,
26 wire, or similar material set vertically in the water and held in place by stakes or anchors
27 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead
28 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 29 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,
30 and other rakes when towed by engine power, patent tongs, kicking with propellers or
31 deflector plates with or without trawls, and any other method that utilizes mechanical
32 means to harvest clams.
- 33 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other
34 rakes when towed by engine power, and any other method that utilizes mechanical means
35 to harvest oysters.
- 36 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite
37 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.

- 1 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead
2 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and
3 lead(s) are not conical, nor are they supported by hoops or frames.
- 4 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use
5 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 6 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish
7 by encirclement and confining fish within itself or against another net, the shore or bank
8 as a result of net design, construction, mesh length, webbing diameter, or method in which
9 it is used.
- 10 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations
11 of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this
12 definition, are vital for portions of the entire life cycle, including the early growth and development
13 of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and
14 estuarine survey sampling, include:
- 15 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems
16 utilized by post-larval and later juvenile anadromous fish.
- 17 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of
18 anadromous fish has been documented in Division sampling records through direct
19 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 20 (c) "Coral" means:
- 21 (i) fire corals and hydrocorals (Class Hydrozoa);
22 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
23 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which
24 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),
25 and sea pansies (*Renilla* sp.).
- 26 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and
27 live oysters of varying density.
- 28 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard
29 substrate, excluding mollusk shells, but including dead coral or rock. Living marine
30 organisms associated with hard bottoms, banks, reefs, and live rock include:
- 31 (i) Coralline algae (Division Rhodophyta);
32 (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.),
33 green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);
34 (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
35 (iv) sponges (Phylum Porifera);

- 1 (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class
2 Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea
3 (Class Anthozoa);
- 4 (vi) Bryozoans (Phylum Bryozoa);
- 5 (vii) tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and
6 Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
- 7 (viii) mussel banks (Phylum Mollusca: Gastropoda); and
- 8 (ix) acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- 9 (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity,
10 temperature, and other factors, young finfish and crustaceans spend the major portion of
11 their initial growing season. Primary nursery areas are those areas in the estuarine system
12 where initial post-larval development takes place. These are areas where populations are
13 uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system
14 where later juvenile development takes place. Populations are composed of developing
15 sub-adults of similar size that have migrated from an upstream primary nursery area to the
16 secondary nursery area located in the middle portion of the estuarine system.
- 17 (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams,
18 oysters, scallops, mussels, and whelks use to reproduce and survive because of such
19 favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those
20 shellfish producing areas closed to shellfish harvest due to pollution.
- 21 (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats
22 that provide exceptional habitat functions or that are particularly at risk due to imminent
23 threats, vulnerability, or rarity.
- 24 (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:
- 25 (i) are vegetated with one or more species of submerged aquatic vegetation including
26 bushy pondweed or southern naiad (*Najas guadalupensis*), coontail
27 (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed
28 (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton*
29 *perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton*
30 *pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton*
31 *pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche*
32 *heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and
33 wild celery (*Vallisneria americana*). These areas may be identified by the presence
34 of above-ground leaves, below-ground rhizomes, or reproductive structures
35 associated with one or more SAV species and include the sediment within these
36 areas; or

(ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or this Rule or 15A NCAC 03K .0304 and .0404, to apply to or conflict with the non-development control activities authorized by that Act.

(5) licenses, permits, leases and franchises, and record keeping:

- (a) "Assignment" means temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
- (b) "Designee" means any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (c) "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in State waters or when the vessel originates from or returns to a North Carolina port.
- (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- (e) "Holder" means a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment.
- (f) "Land" means:
 - (i) for commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) for purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.
 - (iii) for recreational fishing operations, when fish are retained in possession by the fisherman.

- 1 (g) "Licensee" means any person holding a valid license from the Department to take or deal
 2 in marine fisheries ~~resources~~resources, except as otherwise defined in 15A NCAC 03O
 3 .0109.
- 4 (h) "Logbook" means paper forms provided by the Division and electronic data files generated
 5 from software provided by the Division for the reporting of fisheries statistics by persons
 6 engaged in commercial or recreational fishing or for-hire operators.
- 7 (i) "Master" means captain or operator of a vessel or one who commands and has control,
 8 authority, or power over a vessel.
- 9 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who
 10 did not possess a valid dealer license for the previous license year in that name. For
 11 purposes of license issuance, adding new categories to an existing fish dealers license does
 12 not constitute a new dealer.
- 13 (k) "Office of the Division" means physical locations of the Division conducting license and
 14 permit transactions in Wilmington, Morehead City, Washington, ~~Morehead City,~~ Roanoke
 15 ~~Island, and Elizabeth City, and Roanoke Island,~~ North Carolina. Other businesses or
 16 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or
 17 Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- 18 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs
 19 operations of a business entity, such as a corporate officer or executive level supervisor of
 20 business operations, and the person responsible for use of the issued license in compliance
 21 with applicable statutes and rules.
- 22 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise
 23 directs a recreational fishing tournament and is the holder of the Recreational Fishing
 24 Tournament License.
- 25 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,
 26 exchanged, bartered, distributed, or landed.
- 27 (o) "Transfer" means permanent transferal to another person of privileges under a license for
 28 which transfer is permitted. The person transferring the license retains no rights or interest
 29 under the license transferred.
- 30 (p) "Trip ticket" means paper forms provided by the Division and electronic data files
 31 generated from software provided by the Division for the reporting of fisheries statistics
 32 by licensed fish dealers.

34 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*
 35 *Eff. January 1, 1991;*
 36 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*
 37 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*

1 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*
2 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*
3 *Amended Eff. August 1, 2000;*
4 *Temporary Amendment Eff. August 1, 2000;*
5 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*
6 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*
7 *Readopted Eff. June 1, ~~2022~~, 2022;*
8 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

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

2
3 **SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS, AND MUSSELS**

4
5 **SECTION .0100 – SHELLFISH, GENERAL**

6
7 **15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**

8 (a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as
9 polluted by proclamation by the Fisheries Director ~~except as provided in Rules .0103, .0104, .0107, and .0401 of this~~
10 ~~Subchapter.~~ except in accordance with:

- 11 (1) a Depuration Permit as set forth in Rule .0107 of this Section;
12 (2) an Aquaculture Seed Transplant Permit; or
13 (3) a Shellfish Relocation Permit. The Fisheries Director may, by proclamation, designate sites for
14 relocation where shellfish would otherwise be destroyed due to maintenance dredging, construction,
15 or other development activities.

16 Individuals shall obtain an Aquaculture Seed Transplant Permit from the Secretary, or a Depuration Permit or a
17 Shellfish Relocation Permit from the Fisheries Director setting forth the time, area, and method by which such shellfish
18 may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

19 (b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest
20 areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such
21 closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900
22 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of
23 Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252- 726-7021.

24 ~~(b)(c)~~ (c) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels
25 to protect the shellfish populations for management purposes or for protection of public health related to the public
26 health programs that fall under the authority of the Marine Fisheries Commission not specified in ~~Paragraph (a)~~
27 Paragraphs (a) or (b) of this Rule.

28 ~~(d)~~ (d) It shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North
29 Carolina, except as provided in 15A NCAC 03I .0104.

30
31 *History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-203; 113-221.1; 113-221.2;*
32 *143B-289.52;*
33 *Eff. January 1, 1991;*
34 *Amended Eff. July 1, 1993;*
35 *Temporary Amendment Eff. July 1, 1999;*
36 *Amended Eff. August 1, 2000;*
37 *Temporary Amendment Eff. October 1, 2001;*

- 1 *Amended Eff. October 1, 2008; April 1, 2003;*
- 2 *Readopted Eff. March 15, ~~2023~~, 2023;*
- 3 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0104 is proposed for repeal as follows:

2
3 **15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS**

4 ~~(a) It shall be unlawful to take shellfish from polluted public waters or franchises for planting on shellfish leases and~~
5 ~~franchises except as authorized by G.S. 113-203. Shellfish lease and franchise holders shall first obtain a relay permit~~
6 ~~from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The~~
7 ~~procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

8 ~~(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to~~
9 ~~the start of relaying activities.~~

10 ~~(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.~~

11 ~~(d) The season for relaying shellfish may occur within a specified six week period between the date of the statewide~~
12 ~~closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:~~

13 ~~(1) the status of shellfish resources available for harvest from public bottom;~~

14 ~~(2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;~~

15 ~~(3) market factors affecting sale of shellfish from public bottom; and~~

16 ~~(4) availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying~~
17 ~~activity.~~

18 ~~(e) The Fisheries Director, shall close by proclamation any shellfish lease or franchise for which the owner has~~
19 ~~obtained a permit to relay shellfish from polluted public waters or franchises. The leases and franchises shall remain~~
20 ~~closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening~~
21 ~~of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in~~
22 ~~Paragraph (d) of this Rule.~~

23
24 *History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52;*

25 *Eff. January 1, 1991;*

26 *Amended Eff. March 1, 1996; September 1, 1991;*

27 *Temporary Amendment Eff. October 1, 2001;*

28 *Amended Eff. April 1, 2003;*

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

30 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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

2
3 **SECTION .0300 - HARD CLAMS (MERCENARIA)**

4
5 **15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS**

6 (a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing
7 operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams
8 (except Rangia or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section.
9 Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately
10 returned to the bottom from which they were taken. In determining whether the size and harvest limits have been
11 exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any
12 combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public
13 bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.

14 (b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in
15 Rule .0302 of this Section may or may not apply for:

- 16 (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900
17 and the North Carolina Hard Clam Fishery Management Plan; or
18 (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the
19 Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery
20 Management ~~Plan; or Plan.~~
21 ~~(3) relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this~~
22 ~~Subchapter.~~

23
24 *History Note:* Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221.2; 143B-289.52;
25 Eff. January 1, 1991;
26 Amended Eff. March 1, 1994;
27 Readopted Eff. March 15, ~~2023~~, 2023;
28 Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 03K .0401 is proposed for repeal as follows:

2

3

SECTION .0400 - RANGIA CLAMS

4

15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS

6 ~~It shall be unlawful to take Rangia clams or their shells by any method from polluted waters without first obtaining a~~

7 ~~Permit to Harvest Rangia Clams from Polluted Areas from the Fisheries Director. The permit application shall include~~

8 ~~a list of all designees operating under the permit. The permit shall designate the area, means and methods, and times~~

9 ~~in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia~~

10 ~~clams are to be landed and the method for disposing of Rangia clam meats. The procedures and requirements for~~

11 ~~obtaining permits are found in 15A NCAC 03O .0500.~~

12

13 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;*

14 *Eff. January 1, 1991;*

15 *Amended Eff. August 1, 2004;*

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

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

1 15A NCAC 03K .0403 is proposed for repeal as follows:

2

3 **15A NCAC 03K .0403 DISPOSITION OF MEATS**

4 ~~It shall be unlawful to dispose of meats from Rangia clams taken from prohibited (polluted) waters by a method that~~
5 ~~will result in human consumption or create risk of human consumption.~~

6

7 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52;*

8 *Eff. January 1, 1991;*

9 *Amended Eff. August 1, 2004;*

10 *Readopted Eff. April 1, ~~2019, 2019~~;*

11 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0405 is proposed for repeal as follows:

2

3 **15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED**

4 ~~It shall be unlawful to possess oysters, hard clams, or mussels while taking Rangia clams or their shells from a~~
5 ~~prohibited (polluted) area.~~

6

7 *History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;*

8 *Eff. August 1, 2004;*

9 *Readopted Eff. April 1, ~~2019~~ 2019;*

10 *Repealed Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0201 is proposed for amendment as follows:

2
3 **SECTION .0200 – SHELLFISH LEASES AND FRANCHISES**

4
5 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND**
6 **FRANCHISES**

7 (a) For the purpose of this Section:

- 8 (1) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages,
9 racks, bags, or floats.
- 10 (2) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using
11 cages, racks, bags, or floats.
- 12 (3) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or
13 authorized cultch materials on a shellfish lease or franchise.
- 14 (4) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish
15 lease or franchise and lawful sale of those shellfish to the public at large or to a licensed shellfish
16 dealer.

17 ~~(a)~~(b) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and
18 requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish
19 aquaculture purposes:

- 20 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
21 201.1, or have 10 bushels or more of shellfish per acre;
- 22 (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a
23 water-dependent shore-based structure, except no minimum setback is required when the area to be
24 leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-
25 201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped
26 shoreline. For the ~~purposes~~purpose of this Rule, a water-dependent shore-based structure shall
27 include docks, wharves, boat ramps, bridges, bulkheads, and groins;
- 28 (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
- 29 (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing
30 ~~leases in the area,~~lease areas in the vicinity, shall not interfere with navigation or with existing,
31 traditional uses of the area; and
- 32 (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

33 ~~(b)~~(c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a
34 shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to
35 franchises ~~recognized pursuant to G.S. 113-206~~ shall meet the standards in G.S. 113-202.2.

1 ~~(e)(d)~~ ~~Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases~~ Shellfish bottom leases and
 2 franchises granted on or before July 1, 2019 shall be terminated unless they meet the following requirements, in
 3 addition to the standards in and as allowed by G.S. 113-202:

- 4 (1) they produce ~~and market~~ 10 bushels of shellfish per acre per year; and
- 5 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
 6 per year, or a combination of cultch and seed shellfish where the percentage of required cultch
 7 planted and the percentage of required seed shellfish planted totals at least 100 percent.

8 ~~(d)(e)~~ Shellfish water column leases granted on or before July 1, 2019 shall be terminated unless they meet the
 9 following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- 10 (1) they produce ~~and market~~ 40 bushels of shellfish per acre per year; or
- 11 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

12 (f) Shellfish bottom leases and franchises granted after July 1, 2019 shall be terminated unless they meet the following
 13 requirements, in addition to the standards in and as allowed by G.S. 113-202:

- 14 (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year
 15 period beginning in year five of the shellfish bottom lease or franchise; or
- 16 (2) for intensive culture bottom operations, the holder of the shellfish bottom lease or franchise provides
 17 evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive
 18 culture bottom operations, the holder of the lease or franchise plants a minimum of 15,000 shellfish
 19 seed per acre per year.

20 (g) Shellfish water column leases granted after July 1, 2019 shall be terminated unless they meet the following
 21 requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- 22 (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year
 23 period beginning in year five of the shellfish water column lease; or
- 24 (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000
 25 shellfish seed per acre annually.

26 ~~(e)(h)~~ The following standards shall be applied to determine compliance with Paragraphs ~~(e) and (d)~~ (d), (e), (f), and
 27 (g) of this Rule:

- 28 (1) ~~Only~~ only shellfish ~~marketed, planted, planted~~ or produced as defined in ~~15A NCAC 031.0101~~ as
 29 the fishing activities "~~shellfish marketing from leases and franchises,~~" "~~shellfish planting effort on~~
 30 ~~leases and franchises,~~" or "~~shellfish production on leases and franchises~~" Paragraph (a) of this Rule
 31 shall be included in the annual shellfish lease and franchise production reports required by Rule
 32 .0207 of this Section.
- 33 (2) ~~If~~ if more than one shellfish lease or franchise is used in the production of shellfish, one of the leases
 34 or franchises used in the production of the shellfish shall be designated as the producing lease or
 35 franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease
 36 or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as
 37 planting effort on only one lease or franchise.

(3) ~~Production and marketing production~~ information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. ~~The shellfish lease or franchise~~ Shellfish bottom leases and franchises granted on or before July 1, 2019 shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish bottom leases. The shellfish lease or franchise~~ compliance. Shellfish bottom leases and franchises granted after July 1, 2019 and shellfish water column leases shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in ~~compliance for shellfish water column leases.~~ compliance.

(4) ~~All~~ all bushel measurements shall be in standard U.S. bushels.

(5) ~~In~~ in determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

(A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and

(B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.

(6) ~~Production and marketing production~~ rate averages shall be computed irrespective of transfer of the shellfish lease or franchise. The production ~~and marketing~~ rates shall be averaged for the following situations using the time periods described:

(A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;

(B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;

(C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or

(D) for a shellfish bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.

(7) ~~In~~ in the event that a portion of an existing shellfish lease or franchise is obtained by a new lease or franchise holder, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

~~(f)(i) Persons~~ To be eligible for additional shellfish lease acreage, persons holding five or more any acres under all-a ~~shellfish bottom leases and franchises combined lease or franchise~~ shall meet the requirements established ~~in~~ in Paragraph (e) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries in:

1 (1) Paragraphs (d), (e), (f), and (g) of this Rule;

2 (2) Rule .0204 of this Section; and

3 (3) Rule .0503(a) of this Subchapter.

4

5 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206;*
6 *143B-289.52; S.L. 2019-37, s. 3;*

7 *Eff. January 1, 1991;*

8 *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*

9 *Temporary Amendment Eff. October 1, 2001;*

10 *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;*

11 *Readopted Eff. August 23, ~~2022~~, 2022;*

12 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37).*

1 15A NCAC 03O .0501 is proposed for amendment as follows:

2
3 **SECTION .0500 - PERMITS**

4
5 **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

6 (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of
7 attorney shall provide the following information:

- 8 (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the
9 application and, if the applicant is not appearing before a license agent or the designated Division
10 of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
- 11 (2) a current picture identification of the applicant, responsible party, or person holding a power of
12 attorney, acceptable forms of which shall include driver's license, North Carolina Identification card
13 issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien
14 card (green card), or passport or, if applying by mail, a copy thereof;
- 15 (3) for permits that require a list of designees, the full names and dates of birth of the designees of the
16 applicant who will be acting pursuant to the requested permit;
- 17 (4) certification that the applicant and his or her designees do not have four or more marine or estuarine
18 resource convictions during the previous three years;
- 19 (5) for permit applications from business entities:
- 20 (A) the business name;
- 21 (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC
22 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
- 23 (C) the name, address, and phone number of responsible party and other identifying
24 information required by this Subchapter or rules related to a specific permit;
- 25 (D) for a corporation applying for a permit in a corporate name, the current articles of
26 incorporation and a current list of corporate officers;
- 27 (E) for a partnership that is established by a written partnership agreement, a current copy of
28 such agreement shall be provided when applying for a permit; and
- 29 (F) for business entities other than corporations, copies of current assumed name statements if
30 filed with the Register of Deeds office for the corresponding county and copies of current
31 business privilege tax certificates, if applicable; and
- 32 (6) additional information as required for specific permits.

33 (b) A permittee shall hold a valid:

- 34 (1) Standard or Retired Standard Commercial Fishing License in order to hold:
- 35 (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
- 36 (B) a Permit for Weekend Trawling for Live Shrimp; or
- 37 (C) a Pound Net Set Permit.

1 The master designated on the single vessel corporation Standard Commercial Fishing License is the
2 individual required to hold the Permit for Weekend Trawling for Live Shrimp.

- 3 (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries
4 under a quota or allocation for that category.

5 (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall
6 be eligible to hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

7 (d) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or
8 Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:

- 9 (1) Depuration Permit;
10 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
11 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or~~
12 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish; or~~
13 ~~(5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as~~
14 provided in G.S. 113-169.2.

15 (e) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or
16 Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a
17 permittee to hold a:

- 18 (1) Depuration Permit; or
19 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~
20 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.~~
21 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish.~~

22 (f) Aquaculture Operation Permit and Aquaculture Collection Permit:

- 23 (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold
24 an Aquaculture Collection Permit.
25 (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for
26 the species harvested and the gear used under the Aquaculture Collection Permit.

27 (g) Atlantic Ocean Striped Bass Commercial Gear Permit:

- 28 (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the
29 following types of gear for an initial permit and at intervals of three consecutive license years
30 thereafter:
31 (A) a gill net;
32 (B) a trawl net; or
33 (C) a beach seine.

34 For the purpose of this Rule, a "beach seine" shall mean a swipe net constructed of multi-filament
35 or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from
36 the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the
37 permittee for three consecutive license years without regard to subsequent annual permit issuance.

1 (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit
2 regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial
3 Fishing Licenses, or assignments held by that person.

4 (h) Applications submitted without complete and required information shall not be processed until all required
5 information has been submitted. Incomplete applications shall be returned to the applicant with the deficiency in the
6 application noted.

7 (i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her
8 agreement to abide by the permit general and specific conditions established under 15A NCAC 03J ~~.0501, .0505, 03K~~
9 ~~.0103, .0104, .0107, .0111, .0401, .0501 and .0505, 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules~~
10 ~~.0502 and .0503 of this Section, as applicable to the requested permit.~~

11 (j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate
12 factors such as the following:

13 (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries
14 Commission;

15 (2) the applicant's demonstration of a valid justification for the permit; and

16 (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

17 (k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit
18 request and the reasons therefor. The applicant may submit further information or reasons why the permit should not
19 be denied or modified.

20 (l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise
21 established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of
22 permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration
23 of the activity, compliance with federal or State fishery management plans or implementing rules, conflicts with other
24 fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

25 (m) For permit renewals, the permittee's signature on the application shall certify all information is true and accurate.
26 Notarized signatures on renewal applications shall not be required.

27 (n) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change
28 of name or address, in accordance with G.S. 113-169.2.

29 (o) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee
30 prior to use of the permit by that designee.

31 (p) Permit applications shall be available at all Division of Marine Fisheries offices.

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33 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*

34 *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*

35 *Eff. April 1, 2001;*

36 *Temporary Amendment Eff. October 1, 2001;*

1 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,*
2 *2007; September 1, 2005; April 1, 2003; August 1, 2002;*
3 *Readopted Eff. April 1, ~~2019~~, 2019;*
4 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0503 is proposed for amendment as follows:

2

3 **15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

4 (a) Aquaculture Operation Permit and Aquaculture Collection Permit:

5 (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without
6 first securing an Aquaculture Operation Permit from the Fisheries Director.

7 (2) It shall be unlawful:

8 (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture
9 purposes without first obtaining an Aquaculture Collection Permit from the Fisheries
10 Director;

11 (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine
12 resources taken pursuant to an Aquaculture Collection Permit; or

13 (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year
14 on the form provided by the Division of Marine Fisheries, stating the amount and
15 disposition of marine and estuarine resources collected under authority of an Aquaculture
16 Collection Permit.

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

20 ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on
21 a calendar year basis.

22 ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to
23 an Aquaculture Collection Permit at the time of application.

24 (b) Atlantic Ocean Striped Bass Commercial Gear Permit:

25 (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation
26 without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.

27 (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit
28 during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired
29 Standard Commercial Fishing licenses, or assignments.

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

32 (d) Coastal Recreational Fishing License Exemption Permit:

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

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

4 (A) individuals with physical or mental impairment;

5 (B) members of the United States Armed Forces and their dependents, upon presentation of a
6 valid military identification card;

7 (C) individuals receiving instruction on recreational fishing techniques and conservation
8 practices from employees of state or federal marine or estuarine resource management
9 agencies or instructors affiliated with educational institutions; and

10 (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

11 For the purpose of this Paragraph, educational institutions include high schools and other secondary
12 educational institutions.

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

16 (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the
17 following, in addition to the information required in Rule .0501 of this Section, is submitted to the
18 Fisheries Director, in writing, at least 30 days prior to the event:

19 (A) the name, date, time, and physical location of the event;

20 (B) documentation that substantiates local, state, or federal involvement in the organized
21 fishing event, if applicable;

22 (C) the cost or requirements, if any, for an individual to participate in the event; and

23 (D) an estimate of the number of participants.

24 (e) Dealer permits for monitoring fisheries under a quota or allocation:

25 (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer
26 permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a
27 fish dealer issued such permit to fail to:

28 (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine
29 Fisheries, the previous day's landings for the permitted fishery to the Division. Landings
30 for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable
31 to fax or electronically mail the required information, the permittee shall call in the
32 previous day's landings to the Division;

33 (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request
34 or no later than five days after the close of the season for the fishery permitted;

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

36 (D) contact the Division daily, regardless of whether a transaction for the fishery for which a
37 dealer is permitted occurred; and

- 1 (E) record the permanent dealer identification number on the bill of lading or receipt for each
2 transaction or shipment from the permitted fishery.
- 3 (2) Atlantic Ocean Flounder Dealer Permit:
- 4 (A) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land
5 Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single
6 transaction at their licensed location during the open season without first obtaining an
7 Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the
8 Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- 9 (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100
10 pounds of flounder from a single transaction from the Atlantic Ocean without first
11 obtaining an Atlantic Ocean Flounder Dealer Permit.
- 12 (3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be unlawful for a fish dealer to
13 purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of
14 Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season
15 unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- 16 (4) Spiny Dogfish Dealer Permit: It shall be unlawful for a fish dealer to purchase or possess more than
17 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny
18 Dogfish Dealer Permit.
- 19 (5) Striped Bass Dealer Permit:
- 20 (A) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken
21 from the following areas without first obtaining a Striped Bass Dealer Permit validated for
22 the applicable harvest area:
- 23 (i) the Atlantic Ocean;
- 24 (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201;
- 25 or
- 26 (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area
27 as designated in 15A NCAC 03R .0201.
- 28 (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest
29 areas opened by proclamation without having a valid Division of Marine Fisheries-issued
30 tag for the applicable area affixed through the mouth and gill cover or, in the case of striped
31 bass imported from other states, a similar tag that is issued for striped bass in the state of
32 origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred.
33 Tags shall be obtained at the Division offices. The Division shall specify the quantity of
34 tags to be issued based on historical striped bass landings. It shall be unlawful for the
35 permittee to fail to surrender unused tags to the Division upon request.
- 36 (f) Horseshoe Crab Biomedical Use Permit:
- 37 (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.

1 (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to
2 fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,
3 due on February 1 of each year. Such reports shall be filed on forms provided by the Division and
4 shall include a monthly account of the number of crabs harvested, a statement of percent mortality
5 up to the point of release, the harvest method, the number or percent of males and females, and the
6 disposition of bled crabs prior to release.

7 (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to
8 fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management
9 Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery
10 Management Plan for Horseshoe Crab is incorporated by reference including subsequent
11 amendments and editions. Copies of this plan are available via the Internet from the Atlantic States
12 Marine Fisheries Commission at <http://www.asmfmc.org/fisheries-management/program-overview>
13 and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC
14 28557, at no cost.

15 (g) Permit for Weekend Trawling for Live Shrimp:

16 (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday
17 without first obtaining a Permit for Weekend Trawling for Live Shrimp.

18 (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls
19 from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.

20 (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(4)~~(g)(1)
21 of this Rule to:

22 (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with
23 trawls;

24 (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in
25 Internal Coastal Waters;

26 (C) possess more than one gallon of dead shrimp (heads on) per trip;

27 (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait
28 tanks, with aerators or circulating water, with a minimum combined tank capacity of 50
29 gallons; or

30 (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or
31 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

32 (h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as
33 set forth in 15A NCAC 03J .0505.

34 (i) Scientific or Educational Activity Permit:

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

- 1 (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and
2 possession allowances approved by the Division of Marine Fisheries.
- 3 (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted
4 by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.
- 5 (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to
6 fail to submit an annual report on collections and, if authorized, sales to the Division, due on
7 December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on
8 forms provided by the Division. Scientific or Educational Activity permits shall be issued on a
9 calendar year basis.
- 10 (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational
11 Activity Permit without:
- 12 (A) the required license for such sale;
- 13 (B) an authorization stated on the permit for such sale; and
- 14 (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish
15 dealer.
- 16 (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific
17 or Educational Activity Permit at the time of application.
- 18 (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries
19 Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of
20 the permit, specifying activities and location.
- 21 (j) Under Dock Oyster Culture Permit:
- 22 (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without
23 first obtaining an Under Dock Oyster Culture Permit.
- 24 (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth
25 in G.S. 113-210(c).
- 26 (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct
27 answers, based on an educational package provided by the Division of Marine Fisheries pursuant to
28 G.S. 113-210(j), demonstrating the applicant's knowledge of:
- 29 (A) the application process;
- 30 (B) permit criteria;
- 31 (C) basic oyster biology and culture techniques;
- 32 (D) shellfish harvest area closures due to pollution;
- 33 (E) safe handling practices;
- 34 (F) permit conditions; and
- 35 (G) permit revocation criteria.
- 36 (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of
37 the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

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History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;
Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;
Eff. April 1, 2001;
Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1,
2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002;
Readopted Eff. April 1, ~~2019~~2019;
Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

1 15A NCAC 18A .0901 is proposed for amendment as follows:
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3 **SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**
4

5 **15A NCAC 18A .0901 DEFINITIONS**

6 The following definitions shall apply to this Section.

- 7 (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting
8 of shellfish for direct market purposes.
- 9 (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area
10 with restricted tidal flow.
- 11 (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as
12 determined by a plate count.
- 13 (4) "Commercial marina" means a marina that offers one or more of the following services: fuel,
14 transient dockage, haul-out facilities, or repair services.
- 15 (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent
16 pollution but that may be used for harvesting shellfish for direct market purposes when management
17 plan criteria are met.
- 18 (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- 19 (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall
20 be calculated by:
- 21 (a) calculating the arithmetic mean and standard deviation of the sample result logarithms
22 (base 10);
- 23 (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
- 24 (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
- 25 (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the
26 estimated 90th percentile.
- 27 (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a
28 multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C
29 plus or minus 0.2° C in a water bath.
- 30 (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- 31 (10) "Marina" means any water area with a structure (such as a dock, basin, floating dock) that is utilized
32 for docking or otherwise mooring vessels and constructed to provide temporary or permanent
33 docking space for more than 10 boats.
- 34 (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and
35 accumulated by shellstock.
- 36 (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the
37 two middle numbers when the sequence has an even number of numbers.

- 1 (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit
2 volume and is determined from the number of positive results in a series of fermentation tubes.
- 3 (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry
4 program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in
5 accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- 6 (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been
7 impeded by natural or man-made barriers.
- 8 (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- 9 (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct
10 market purposes.
- 11 (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be
12 unsafe for the harvest of shellfish for human consumption.
- 13 (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit
14 and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish
15 safe for human consumption.
- 16 (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish
17 growing area including sources of pollution, the effects of wind, tides, and currents in the
18 distribution and dilution of polluting materials, and the bacteriological quality of water.
- 19 (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops
20 when the final product is the shucked adductor muscle only.
- 21 (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey
22 and that is used to track the location where shellfish are harvested.
- 23 (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish
24 life.
- 25 (24) "Shellstock" means live molluscan shellfish in the shell.
- 26 (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any
27 potential or actual pollution sources or other environmental factors that may impact the sanitary
28 quality of a shellfish growing area.
- 29 (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the
30 bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution
31 and scheduled sufficiently far in advance to support random collection with respect to environmental
32 conditions.

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34 *History Note:* Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
35 Eff. June 1, 1989;
36 Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;
37 Readopted Eff. May 1, ~~2021~~-2021;

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Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).

1 15A NCAC 18A .0906 is proposed for amendment as follows:

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3 **15A NCAC 18A .0906 RESTRICTED AREAS**

4 (a) Shellfish growing waters may be classified as restricted if:

- 5 (1) a sanitary survey indicates there are no significant point sources of pollution; and
6 (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels
7 that shellstock can be made safe for human consumption by either relaying or depuration.

8 ~~(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and~~
9 ~~15A NCAC 18A .0300.~~

10 ~~(e)(b)~~ Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K
11 and 15A NCAC 18A .0300 and .0700.

12 ~~(d)(c)~~ For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the
13 microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality
14 does not exceed the following standards based on results generated using the systematic random sampling strategy:

- 15 (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100
16 milliliters;
17 (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100
18 milliliters;
19 (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or
20 (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-
21 Thermotolerant Escherichia coli (mTEC) test.

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23 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*

24 *Eff. June 1, 1989;*

25 *Readopted Eff. May 1, 2021-2021;*

26 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*