

Fiscal Impact Analysis of Proposed Amendment of Rule 15A NCAC 03J .0301 related to Fishing Pot Marking Requirements

Rule Amendments: 15A NCAC 03J .0301 POTS

Name of Commission: N.C. Marine Fisheries Commission

Agency Contact: Jason Walsh, Fisheries Economics Program Manager
N.C. Division of Marine Fisheries
3441 Arendell Street
Morehead City, NC 28557
Jason.walsh@deq.nc.gov
252-269-9299

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

AUTHORITY

N.C. General Statutes

- G.S. 113-134. Rules.
- G.S. 113-182. Regulation of fishing and fisheries.
- G.S. 113-221.1. Proclamations; emergency review.
- G.S. 143B-289.52. Marine Fisheries Commission – powers and duties.

Necessity: The proposed rule changes seek to lessen the requirements for fishing pot markings from two forms of identification to one form of identification. North Carolina Division of Marine Fisheries (DMF) regularly reviews rules for their effectiveness and their impact on stakeholders. This rule was identified as a rule that could be changed to reduce the burden upon stakeholders. In accordance with N.C.G.S. § 150B-19.1 (a)(2), the North Carolina Marine Fisheries Commission (MFC) is proposing the amendments described below.

I. Summary

The primary purpose of the proposed rule change is to alter requirements for pot markings from two forms of identification to one form of identification. The DMF assessed this rule and coordinated with North Carolina Marine Patrol to conclude that one form of identification is sufficient for marking pots. The proposed rule change is in response to feedback from stakeholders and internal review of processes. Compared to the regulatory baseline, which is the existing rule, the rule change will likely benefit select commercial fishermen in the form of avoided costs from not having to purchase additional identification tags and related equipment. These benefits are considered ongoing since the changes align with ongoing management practice.

II. Introduction and Purpose of Rule Change

At its August 2021 business meeting, the MFC gave approval to begin the rulemaking process for a large package of proposed amendments and readoption of rules under a state-mandated periodic review schedule. One subject in this package covered eight rules related to commercial blue crab harvest and gear regulations. The amendments and readoptions were proposed primarily to conform the rules with existing blue crab management measures previously approved and implemented through Amendment 3 of the Blue Crab Fishery Management Plan. Additional amendments updated marking requirements for pot buoys, consistent with other MFC rules containing gear marking requirements.

Requirements for the use of pots are set forth in 15A NCAC 03J .0301, POTS. Prior to rule readoption, the rule required one of three possible forms of identification on each pot buoy: 1) gear owner's current motorboat registration number; 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. This rule is one of nine MFC rules that contain similar marking requirements for different types of gears, including gill nets (15A NCAC 03J .0103), trawl nets (15A NCAC 03J .0104), channel nets (15A NCAC 03J .0106), seines (15A NCAC 03J .0110), fyke nets and hoop nets (15A NCAC 03J .0111), recreational use of pots (15A NCAC 03J .0302), trotlines (15A NCAC 03J .0305), and pound nets (15A NCAC 03J .0501). As part of the readoption process, the MFC proposed amendments to make these requirements consistent across rules. As a result, amendments were proposed to the "pots" rule to require the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. When the proposed changes were developed, North Carolina Marine Patrol staff estimated many (at least half) of commercial fishermen using pots already met the requirements that were proposed. The proposed changes were promulgated through the rulemaking process set forth in the Administrative Procedure Act and amendments to the "pots" rule became effective March 15, 2023.

At the May 2023 MFC business meeting, a commissioner relayed concerns from commercial fishermen about the new pot marking requirements. The DMF does not collect data on the number of pots that fishermen that fish with pots use in their operations, but it is estimated that these individuals use hundreds of pots in their commercial fishing operation and use a vessel to deploy and retrieve them. At any point, fishermen may opt to sell their vessel and buy another vessel, which under the new requirements means the buoy for every pot must be changed to reflect the new vessel registration number or vessel name, even if the buoy already has the gear owner's last name and initials. Under the original rule, only one of the three means of identification was required to be marked on the pot buoy (the gear owner's name, vessel number, or vessel name). The changes that became effective March 15, 2023, were not made due to problems with pot identification, rather the changes were made for consistency across gears for marking requirements.

N.C.G.S. § 150B-19.1, Requirements for agencies in the rule-making process, Subparagraph (a)(2), states an "agency shall seek to reduce the burden upon those persons or entities who must comply with the rule." Since the recent amendments to 15A NCAC 03J .0301 for pot marking

requirements were made for consistency across gears and MFC rules, not due to problems for North Carolina Marine Patrol or others with the identification of the owner of pots, and since there have been no new problems with pot identification, it is appropriate to grant some relief for marking requirements to commercial fishermen that use pots in their commercial fishing operation by simplifying the requirements.

This relief can be achieved by restoring the original content of 15A NCAC 03J .0301(c) to reflect a choice of any one of three ways for a gear owner to mark their pot: 1) gear owner's current motorboat registration number; or 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. The current rule requires the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. The proposed amendments would change the requirements from "gear owner's name AND gear owner's vessel number OR gear owner's vessel name" to "gear owner's name OR gear owner's vessel number OR gear owner's vessel name", simplifying the requirements.

The proposed amendments would mean that marking requirements for pots would be different than marking requirements for other gears, and the rulemaking process would have to be undertaken, which takes time. But, per North Carolina Marine Patrol, pot identification would be sufficient with either the gear owner's name, or the gear owner's vessel number, or the gear owner's vessel name, and there would be no impact to enforcement activities. Commercial fishermen that use pots in their commercial fishing operation would be granted some relief with the adoption of the simplified requirements.

The proposed rule changes would provide reasonable relief to pot fishery participants while ensuring sufficient pot identification is maintained.

III. Fiscal Analysis

Compared to the regulatory baseline, which is the current version of Rule 15A NCAC 03J .0301, the proposed changes are likely to result in benefits (avoided costs), particularly to commercial pot fishermen. However, because the proposed changes conform with ongoing management practice, any benefits should be considered ongoing. Using the estimated costs from the fiscal analysis done for the previous rulemaking¹, the ongoing benefits to existing commercial fisherman are estimated to be \$375,214,² collectively. These benefits, which are in the form of avoided costs, are related to the saving of labor time as well as costs for identification tags, stamp set-up fees, and commercial tools. In addition to these ongoing benefits to existing stakeholders, there could be additional benefits (in the form of avoided costs) to new stakeholders who enter the industry and stakeholders that transfer pot ownership in the future.

¹ Fiscal analysis for 2021 amendments to Rule 15A NCAC 03J .0301: https://www.osbm.nc.gov/documents/files/DEQ_2021-06-28/open

² \$318,205 in 2021\$ inflated to \$375,214 in 2024\$ using [CPI inflation calculator](#).

The changes are not expected to result in any impacts to enforcement by DMF Marine Patrol staff.

Appendix: Proposed Rule Changes

15A NCAC 03J .0301 POTS

(a) It shall be unlawful to use pots except during time periods and in areas specified herein:

- (1) in Internal Waters from December 1 through May 31, except that:
 - (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 1 through January 31. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from this removal requirement.
 - (B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed from Internal Waters from March 1 through March 15.
- (2) in Internal Waters from June 1 through November 30 in the Northern Region designated in 15A NCAC 03R .0118(1):
 - (A) in areas described in 15A NCAC 03R .0107(a).
 - (B) to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for and designate the areas described in 15A NCAC 03R .0107(b) or any part thereof, for the use of pots.
- (3) in Internal Waters from May 1 through November 30 in the Southern Region designated in 15A NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.
- (4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

(b) It shall be unlawful to use pots:

- (1) in any navigation channel marked by State or Federal agencies; or
- (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It shall be unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. ~~The gear owner's last name and initials~~ One of the following shall be engraved on the attached buoy or identified by attaching engraved metal or plastic tags to the ~~buoy~~. ~~If a vessel is used, the identification shall also include one of the following:~~ buoy:

- (1) gear owner's current motor boat registration number; ~~or~~
- (2) gear owner's U.S. vessel documentation ~~name~~ name; or
- (3) gear owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

- (f) It shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half inch.
- (g) Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than three unobstructed escape rings that are at least two and five-sixteenth inches inside diameter and:
 - (1) for pots with a divider:
 - (A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.
 - (2) for pots without a divider:
 - (A) two escape rings shall be located on opposite panels of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.

For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

- (h) The Fisheries Director may, by proclamation, impose on a commercial fishing operation and for recreational purposes any of the following restrictions for pots:
 - (1) specify time;
 - (2) specify area;
 - (3) specify means and methods;
 - (4) specify record keeping and reporting requirements;
 - (5) specify season, including a closed season for removal of all pots from Internal Waters;
 - (6) specify species; and
 - (7) specify quantity.
- (i) It shall be unlawful to use more than 150 crab pots per vessel in Newport River.
- (j) It shall be unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.
- (k) It shall be unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.
- (l) It shall be unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" shall mean any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992;
September 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. September 1, 2000;

Amended Eff. May 1, 2015; April 1, 2014; September 1, 2005; August 1, 2004; August 1, 2002;
Readopted Eff. March 15, ~~2023~~2023;
Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).