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Permit Rules Issue Paper

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Conforming Rule Changes for Franchises and Shellfish Leases Issue Paper

Fiscal Impact Analysis for Franchises and Shellfish Leases



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April 25, 2025

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
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SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the 2023-2024, 2024-2025, and 2025-2026 rulemaking cycles. Request the MFC vote on approval of Notice of Text for Rulemaking to begin the process for nine rules in the 2025-2026 cycle.

Findings

- 2023-2024 Rulemaking Cycle – Update
 - At its May 2023 business meeting, the MFC began the process for 103 rules in this cycle about shellfish, data collection, and oyster sanctuaries.
 - The MFC approved the rules in stages, so the rules had staggered effective dates between April 1, 2024, and March 24, 2025, some following legislative review.
 - The package is now complete.
- 2024-2025 Rulemaking Cycle – Update
 - At its August 2024 business meeting, the MFC began the process for eight rules in this cycle about pot marking requirements, false albacore management, and the Interstate Wildlife Violator Compact.
 - On October 1, 2024, a news release was issued and the proposed rules were published in the *N.C. Register*, beginning the public comment process. A public hearing was held on October 30, 2024, and the public comment period closed December 2, 2024.
 - The public comments received were presented to the MFC at its February 2025 business meeting when it gave final approval of the rules.
 - The Rules Review Commission (RRC) approved two of the rules on April 24, 2025; both rules will be available for legislative review in the 2026 short session (pots, false albacore).
 - Six rules are scheduled for RRC review on May 29, 2025. These rules have an earliest effective date of June 1, 2025 (Interstate Wildlife Violator Compact).
- 2025-2026 Rulemaking Cycle – Action
 - At its May 2025 business meeting, the MFC is scheduled to vote on Notice of Text for Rulemaking to begin the process for nine rules about permits, and franchises and shellfish leases.
 - The Office of State Budget and Management (OSBM) approved the fiscal analysis for each subject and the rulemaking process is ready to begin.

Action Needed

The MFC will be asked to vote on approval of Notice of Text for Rulemaking to begin the process for the nine rules in the 2025-2026 rulemaking cycle, covering two subjects.

2023-2024 Rulemaking Cycle Update (103 rules complete)

At its May 2023 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 103 rules about shellfish, data collection, and oyster sanctuaries. A news release was issued August 1, 2023, and the proposed rules were published in the August 1, 2023, issue of the *N.C. Register*, beginning the public comment process. The MFC accepted public comments on the proposed rules from August 1 through October 2, 2023. A public hearing was held on August 16, 2023. The MFC received the public comments at its November 2023 business meeting and gave final approval of 83 of the 103 rules that are related to shellfish plants and inspections, to meet readoption deadlines. There are 80 rules that became effective on April 1, 2024. Three rules were automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1 and became effective June 17, 2024.

At its May 2024 business meeting, the MFC was again provided with a copy of the public comments received for this rulemaking cycle and then gave final approval of the remaining 20 rules. Two rules became effective August 1, 2024. The remaining 18 rules were automatically subject to legislative review per Session Law 2019-37, and Session Law 2019-198 and N.C.G.S. § 14-4.1 and became effective March 24, 2025. The rule package is now complete. All 103 rules are available in the [latest supplement](#) to the April 1, 2020 North Carolina Marine Fisheries Commission Rules (see <https://www.deq.nc.gov/about/divisions/marine-fisheries/rules-proclamations-and-size-and-bag-limits/rules>).

2024-2025 Rulemaking Cycle (8 rules)

At its August 2024 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for eight rules about pot marking requirements, false albacore management, and the Interstate Wildlife Violator Compact. A summary of the proposed rules by subject is provided below. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. On October 1, 2024, a news release was issued and the proposed rules were published in the *N.C. Register*, beginning the public comment process. The MFC accepted public comments on the proposed rules from October 1 through December 2, 2024. A public hearing was held on October 30, 2024. The public comments received were presented to the MFC at its February 2025 business meeting when it gave final approval of the rules.

The RRC approved two of the rules on April 24, 2025; both rules will be available for legislative review in the 2026 short session (pots, false albacore). Six rules are scheduled for RRC review on May 29, 2025. These rules have an earliest effective date of June 1, 2025 (Interstate Wildlife Violator Compact).

POT MARKING REQUIREMENTS RULE AMENDMENTS (1 rule)

Proposed amendments would simplify pot marking requirements for commercial fishermen by requiring only one of three ways to mark pot buoys, not two ways: 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. There have been no problems with pot identification and pot identification would be sufficient via a single identifier. The proposed amendments would simplify the requirements and grant some relief to commercial fishermen that use pots in their commercial fishing operation. The rule is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1.

FALSE ALBACORE MANAGEMENT RULE ADOPTION (1 rule)

The proposed adoption of this rule would provide a mechanism to implement management measures to cap harvest when the false albacore fishery landings exceed a threshold of 200% of average landings from both sectors combined from 2018 to 2022. Harvest restrictions would be implemented if the threshold is exceeded as a means to prevent further expansion of the false albacore fisheries beyond the threshold. Currently, there are no rules in place for management of false albacore in North Carolina. There is no baseline stock assessment for false albacore and thus, no biological basis for reducing harvest. The only mechanism to monitor false albacore is through annual landings in North Carolina, which is not a measure for sustainability of the stock. While there is no need to manage to meet sustainability requirements, the MFC is seeking proactive management of false albacore to limit expansion of new and existing fisheries. Management options would include commercial trip limits, recreational bag limits, and recreational vessel limits. The rule is subject to legislative review pursuant to N.C.G.S. § 150B-21.3.

INTERSTATE WILDLIFE VIOLATOR COMPACT RULE ADOPTIONS (6 rules)

The Interstate Wildlife Violator Compact is a voluntary interstate agreement that provides participating states with a mechanism to participate in a reciprocal program to: (1) promote compliance with the statutes, laws, administrative rules and regulations relating to management of wildlife resources in their respective states; and (2) provide for the fair and impartial treatment of wildlife violators operating within the participating states in recognition of the individual's right of due process and the sovereign status of a party state. North Carolina's participation in the Interstate Wildlife Violator Compact has been enacted into state law, so it must be implemented and enforced. Article 22B includes N.C.G.S. § 113-300.7, which requires the Wildlife Resources Commission (WRC) and the MFC to adopt rules necessary to carry out the purpose of Article 22B. The WRC has adopted its rules. For the purposes of the Interstate Wildlife Violator Compact, "wildlife" includes marine and estuarine resources managed by the MFC and the Division of Marine Fisheries (DMF).

2025-2026 Rulemaking Cycle (9 rules)

At its May 2025 business meeting, the MFC is scheduled to vote on Notice of Text for Rulemaking to begin the process for nine rules about permits, and franchises and shellfish leases. A fiscal analysis for each subject has been approved by the Office of State Budget and Management (OSBM) and the documents are included in the briefing materials. The rulemaking process is ready to begin. A table of the steps in the process is included in the briefing materials

and a summary of these proposed rules by subject is provided below. Proposed rules would have an earliest effective date of April 1, 2026, except the rules are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and thus, will have a delayed effective date.

PERMIT RULE AMENDMENTS (5 rules)
(15A NCAC 03I .0101, .0114, 03O .0501-.0503)

Consistent with N.C.G.S. § 150B-19.1, Requirements for agencies in the rule-making process, DMF employees reviewed several MFC rules with permit requirements. DMF employees identified proposed amendments to several rules that would achieve a variety of actions. These actions would add requirements to permanent rules that are no longer variable in nature, increase efficiencies for quota monitoring, protect DMF employees and improve data collection and public health protection, reduce the burden on regulated stakeholders, clarify rules, and remove outdated or unnecessary requirements from rules.

An issue paper is included in the briefing materials that provides information about the affected permits, processes, and requirements, as well as a detailed description of the proposed rule amendments. This issue paper presents two management options for consideration: 1) *Status quo* (do not amend the rules); and 2) amend the rules as proposed. Option 1 would avoid the lengthy rulemaking process but would leave the MFC rules out of date and leave unrealized the opportunity to reduce burden on regulated stakeholders and achieve efficiencies for quota monitored fisheries. Option 2 would require the lengthy rulemaking process but is expected to accomplish the following:

- Update and clarify MFC rules, including:
 - Adding four permits to permanent rule that are currently issued by proclamation;
 - Clarifying a fish dealer is required to submit a trip ticket for fish not sold consistent with N.C. law and MFC rules for commercial harvest reporting requirements;
 - Relocating from proclamation to rule the permit condition that makes it unlawful to refuse to allow DMF employees to obtain data for the conservation and management of marine and estuarine resources;
 - Broadening the definition of "educational institution" to better align with the original purpose of two permits;
 - Adding links to webpages in rules for supporting information that can change frequently;
 - Repealing the Horseshoe Crab Biomedical Use Permit;
- Reduce burden on regulated stakeholders, including:
 - Adding email as an additional means to satisfy call-in requirements for two permits; and
 - Removing the requirement to notarize a permit application, instead requiring the initial permit general condition form to be notarized. This is a more appropriate time in the permit issuance process to verify a permittee's identity; and
- Achieve efficiencies for quota monitored fisheries by requiring any seafood dealer that reports trip tickets electronically to report quota monitoring logs electronically.

CONFORMING RULE AMENDMENTS FOR FRANCHISES AND SHELLFISH LEASES
(5 rules)

(15A NCAC 03I .0101, 03O .0201, .0207, .0208, .0210)

Shellfish franchises recognized under N.C.G.S. § 113-206 are perpetual. The DMF has understood that because franchises are perpetual, the DMF does not have the authority to terminate franchises and thus subjecting a franchise to production requirements would have no consequence. The N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37, Section 3. The MFC's authority over private and protected deeded rights of a shellfish franchise is limited to subjects such as proper marking requirements and permitting of the aquaculture activities occurring on a franchise. So, proposed amendments include the removal of franchises from all shellfish production requirements, as the production requirements are grounds for termination of a leasehold only. Proposed amendments also remove franchises from the rule for termination procedures.

Additional proposed amendments in 15A NCAC 03O .0201, in Paragraphs (d) through (g), clarify production requirements for shellfish leases based on the date a shellfish lease was granted or last renewed. Additional amendments to Paragraphs (i) and (j) clarify who determines eligibility for additional shellfish lease acreage, the time at which the determination of eligibility for additional acreage occurs, what is considered additional shellfish lease acreage, and what is considered acres under a shellfish lease. An issue paper is included in the briefing materials that provides background information and a detailed description of the proposed rule amendments.

While clarifying amendments are proposed in this issue paper for shellfish leaseholders, it is important to note that the primary reason for the proposed rule amendments is to undertake a paper exercise to align MFC rules with current DMF procedures and N.C. General Assembly authority for shellfish aquaculture, neither of which has changed in practice in recent years relative to requirements for franchises. This issue paper presents a single option for consideration, as it is the only option that achieves the objective of the proposed rule changes: to align with current statutory authority and DMF procedures for franchises and shellfish leases, consistent with N.C. Session Law 2019-37, Section 3 as amended by N.C. Session Law 2024-32, Section 5.(a), as well as rulemaking requirements in the Administrative Procedure Act. This option complies with State law and clarifies MFC rules by removing out-of-date requirements, but it requires undergoing the lengthy rulemaking process.

N.C. Marine Fisheries Commission 2024-2025 Annual Rulemaking Cycle

May 2025

Time of Year	Action
February-July 2024	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 23, 2024	MFC approved Notice of Text for Rulemaking
Oct. 1, 2024	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 1-Dec. 2, 2024	Public comment period held
Oct. 30, 2024, 6 p.m.	Public hearing held via WebEx with listening station
March 12, 2025	MFC receives public comments and gives final approval of permanent rules
April 24, 2025	Two rules approved by Office of Administrative Hearings/Rules Review Commission
2026 legislative session	Possible effective date of two rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1, and G.S. 150B-21.3
May 29, 2025	Six rules reviewed by Office of Administrative Hearings/Rules Review Commission
June 1, 2025	Earliest effective date of six rules not automatically subject to legislative review
June 1, 2025	Rulebook supplement available online pending Rules Review Commission approval of rules

N.C. Marine Fisheries Commission 2025-2026 Annual Rulemaking Cycle

May 2025

Time of Year	Action
February-April 2025	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 22, 2025	MFC votes on approval of Notice of Text for Rulemaking
Aug. 1, 2025	Publication of proposed rules in the <i>North Carolina Register</i>
Aug. 1-Sept. 30, 2025	Public comment period held
August 2025	Public hearing held via WebEx with listening station
November 2025	MFC receives public comments and votes on final approval of permanent rules
January 2026	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
2026 legislative session	Possible effective date of rules subject to legislative review per S.L. 2019-198 and G.S. 14-4.1
2026 legislative session	Rulebook supplement available online pending legislative review process

PERMIT RULES ISSUE PAPER

May 1, 2025

I. ISSUE

Make changes to N.C. Marine Fisheries Commission (MFC) rules with permit requirements, including adding four permits to permanent rule that are currently issued by proclamation; requiring any seafood dealer that reports trip tickets electronically to report quota monitoring logs electronically; relocating from proclamation to rule the permit condition that makes it unlawful to refuse to allow N.C. Division of Marine Fisheries (DMF) employees to obtain data for the conservation and management of marine and estuarine resources and public health protection; adding email as an additional means to satisfy call-in requirements for two permits; broadening the definition of "educational institution" to better align with the original purpose of two permits; adding links to webpages in permit rules for supporting information that can change frequently; removing the requirement to notarize a permit application, instead requiring the initial permit general conditions form to be notarized; repealing the Horseshoe Crab Biomedical Use Permit; and making clarifying and conforming changes. The latter includes clarifying that a fish dealer is required to submit a trip ticket for fish not sold consistent with N.C. law and MFC rules for commercial harvest reporting requirements; this clarification is being proposed while the recordkeeping requirements rule is being amended for permit-related needs.

II. ORIGINATION

DMF

III. BACKGROUND

Consistent with N.C.G.S. § 150B-19.1, Requirements for agencies in the rule-making process, DMF employees reviewed several MFC rules with permit requirements. DMF employees identified proposed amendments to several rules that would achieve the actions detailed in the "Issue" section above. These actions would add requirements to permanent rules that are no longer variable in nature, increase efficiencies for quota monitoring, protect DMF employees and improve data collection and public health protection, reduce the burden on regulated stakeholders, clarify rules, and remove outdated or unnecessary requirements from rules. The following sub-sections provide background information about the affected permits, processes, and requirements. Proposed rule amendments are described in the "Discussion" section of this paper.

Adding Permits to Permanent Rule that are Currently Issued by Proclamation

Requiring a Seafood Dealer that Reports Trip Tickets Electronically to Report Quota Monitoring Logs Electronically (15A NCAC 03I .0101, .0114, 03O .0501, .0503)

Dealer Permits for Quota Monitoring

The DMF monitors several commercial fisheries through its Quota Monitoring Program. The Quota Monitoring Program enables the DMF to monitor a commercial fishery quota daily by requiring seafood dealers to report their landings on the following day using a quota monitoring log. A quota monitoring log differs from a trip ticket primarily because the quota monitoring log is due on the following day while a trip ticket is not due until the tenth of the following month. The need to monitor these commercial fisheries on a tighter time scale (daily) necessitates the need for the Quota Monitoring Program.

Dealer permits are established by the DMF to determine how many dealers will be active in a quota-monitored fishery and to ensure that quota monitoring logs will be turned in by the following day as part of the permit conditions. When a commercial quota is established for a particular fishery, a permit can be developed. Dealers would then be required to obtain that permit and to submit quota monitoring logs for the DMF to be able to track the landings daily to avoid exceeding the quota. (Quota monitoring logs are due by noon the following day.)

The DMF currently has dealer permits for quota monitoring for ocean flounder, spiny dogfish, black sea bass (north of Cape Hatteras), and striped bass. Previously, the DMF also had dealer permits for quota monitoring for river herring and ocean American shad fisheries, but those permits were discontinued once those fisheries were permanently closed. At its May 2022 meeting, the MFC adopted Amendment 3 to the Southern Flounder FMP. Amendment 3 included establishing a quota for the estuarine flounder fishery. To track the quota, a new dealer permit was created for estuarine flounder, and dealers that want to operate in this fishery need to obtain that permit and submit quota monitoring logs.

The DMF has, by proclamation, required the Estuarine Flounder Dealer Permit for dealers that want to operate in the estuarine flounder fishery since July 2022 (M-14-2022). N.C.G.S. § 150B-19.1 sets requirements for agencies in the rulemaking process, including for rules to be written in a clear and unambiguous manner. Now that the new permit has been established and the need for the permit and the general requirements for the permit are not variable, relocating the requirements of the Estuarine Flounder Dealer Permit in 15A NCAC 03O .0503, which sets specific permit conditions, would make it easier for stakeholders to find the requirements for the fishery in which they participate.

Long-term, the process of establishing a dealer permit, when needed, could be streamlined. Currently, each affected species has a specific dealer permit associated with it. So, if any new fisheries need to be monitored more closely through the Quota Monitoring Program, a specific permit will need to be developed for each fishery. Changing the structure of the dealer permits could make this process more streamlined. Instead of having a separate specific dealer permit for each species a general dealer permit could be created where species could be added to it as necessary. This would streamline the permitting and rulemaking processes. Seafood dealers who also have federal permits issued from the National Oceanic and Atmospheric Administration (NOAA) Fisheries Greater Atlantic Regional Fisheries Office (GARFO) are familiar with this permitting structure because GARFO issues a single permit that contains endorsements for each species in which a seafood dealer wishes to deal. Similarly, the NOAA Fisheries Southeast Regional Office (SERO) issues all its permits under a single permit number. While each species is technically a separate permit, they are identified under the same number. So, dealers that only have SERO permits are also familiar with the structure as well. Moving to this new structure would simplify reporting for the seafood dealers and would simplify monitoring compliance for DMF employees because there would be fewer permit numbers to report under and monitor (moving from a single permit for each species to just a single general permit with species endorsements). Requirements of the IT infrastructure needed to make this change necessitate long-term planning, including potential budget needs.

Estuarine Gill Net Permit (EGNP)

The Endangered Species Act (ESA) of 1973, 16 U.S.C. 1532 (19), defines a "take" of a protected species as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." However, Incidental Take Permits (ITPs) through 16 U.S.C. 1539 (a)(1)(B) may be issued by the corresponding federal agency for activities that take endangered or threatened species incidental to otherwise lawful activities. The DMF has obtained a series of ITPs from NOAA Fisheries since 2000 authorizing the incidental take of ESA-listed sea turtle species and, since 2014, authorizing the incidental take of ESA-listed Atlantic sturgeon in estuarine anchored (i.e., "set" nets) gill net fisheries. The DMF received a renewed 10-year ITP on October 2, 2024, for the incidental take of sea turtle and sturgeon species in these fisheries. The NOAA Fisheries' draft Environmental Assessment issued the permit after it underwent public comment and completed the process. The newest ITP clarified that "anchored" gill nets covered by the permit exclude runaround, strike, or drop and drift gill nets, which are exempted from requirements of the ITP. The DMF anticipates the continued need for ITPs and the EGNP for the estuarine non-exempt gill net fisheries to continue to operate.

The conservation plan contained within the ITP requires a monitoring component. The DMF established an observer program to monitor the fishery for protected species takes in the current and previous ITPs. Since September 2013, the minimum required observer coverage has been seven percent, with a goal of 10 percent, of total non-exempt large-mesh gill net trips and one percent, with a goal of two percent, of total non-exempt small-mesh gill net trips. If the minimum coverages are unable to be maintained, the estuarine gill net fishery may have to close per the terms of the ITPs. As a result, the DMF has established a mechanism to ensure observed trips are obtained and fishermen are unable to refuse for an observer to collect information on their fishing activities. This mechanism depends on the EGNP.

Prior to the EGNP, other mechanisms were employed. Initially, the DMF's Observer Program obtained observer trips onboard fishermen's vessels through 15A NCAC 03I .0113, which sets requirements for data collection. However, a direct refusal from a fisherman (i.e., not allowing an observer on board his vessel) led to a citation that was not upheld by the Pamlico County District 3B Court on Oct. 2, 2013. The court found that the DMF could not enforce requiring fishermen to take observers onboard their vessels under 15A NCAC 03I .0113. This made it very difficult to attain the necessary observer trips to meet the minimum observer coverage requirements. As a result, the EGNP was developed in collaboration with the industry to facilitate fisherman compliance with observer coverage requirements in internal

coastal and joint fishing waters statewide. The EGNP also established specific permit conditions that aid the Observer Program in obtaining trips and meeting requirements of the ITPs.

The DMF has, by proclamation, required an EGNP for all fishermen participating in the anchored large- and small-mesh estuarine gill net fisheries since September 2014 (M-24-2014). An updated version of this proclamation became effective January 1, 2025 (M-2-2025). The DMF recommends moving long-standing proclamations into rule to aid in the clarity of regulations for the public. Additionally, N.C.G.S. § 150B-19.1 sets requirements for agencies in the rulemaking process, including for rules to be written in a clear and unambiguous manner. Relocating the requirements of the EGNP in 15A NCAC 03O .0503 would make it easier for stakeholders to find the requirements for the fishery in which they participate.

Shellfish Lease Restoration Permit (SLRP)

In 2020, a new scenario presented itself where a shellfish lease holder was using their shellfish lease to grow oysters for restoration purposes, such as manmade oyster reefs and living shorelines, where the shellfish are not for human consumption. Further, during the spring of 2020, impacts from the COVID-19 pandemic started to impact shellfish sales to seafood markets, restaurants, and other venues. To address this, DMF employees began looking for new avenues to facilitate the efforts of shellfish growers to recoup some of the losses they were facing.

The laws regarding shellfish leases have historically been promulgated to regulate shellfish leases for the commercial production of seafood for human consumption (N.C.G.S. § 113-201) along with accompanying requirements for the protection of public health. There was no apparent avenue to allow the use of existing shellfish leases to provide shellfish for restoration purposes. However, it was determined that the laws for the cultivation of shellfish were also applicable to commercial production of shellfish for restoration purposes (N.C.G.S. § 113-201(a)). Accordingly, the SLRP was created to allow a shellfish lease or franchise holder to transport shellfish cultivated on a shellfish lease or franchise for restoration purposes.

The SLRP made it possible for shellfish lease holders to sell oysters and other shellfish to government agencies, environmental organizations, and others for use on manmade oyster reefs, living shorelines, and other restoration endeavors. Transport for restoration purposes means to move oysters or other shellfish from the individual's shellfish lease or franchise to restoration sites for purposes not related to human consumption. The permit includes the requirement that all shellfish lease and franchise activities shall adhere to all shellfish sanitation requirements for the protection of public health, including the most current proclamations, until time of transportation of the shellfish for restoration purposes. Additionally, shellfish transported under the SLRP may only go to restoration sites in waters closed to shellfish harvest (either to waters classified as closed or to open waters during the closed season). The SLRP was developed in collaboration with industry and other stakeholders to allow shellfish growers to transport oysters and other shellfish not meant for human consumption to restoration sites while meeting state and federal public health requirements.

The DMF has, by proclamation, required a SLRP for all shellfish lease or franchise holders who participate in transporting shellfish to restoration areas since April 2021 (SF-6-2021). N.C.G.S. § 150B-19.1 sets requirements for agencies in the rulemaking process, including for rules to be written in a clear and unambiguous manner. Now that the new permit has been established and the need for the permit and the general requirements for the permit are not variable, relocating the requirements of the SLRP in 15A NCAC 03O .0503 would make it easier for stakeholders to find the requirements for the activities in which they participate.

Shellfish Relocation Permit (SRP)

MFC Rule 15A NCAC 03K .0101 makes it unlawful to take shellfish from areas that have been designated as polluted. Amendments to this rule that became effective March 24, 2025, updated the exceptions to this otherwise unlawful activity. These exceptions apply to the holder of any of three permits: Depuration, Aquaculture Seed Transplant, or Shellfish Relocation. Requirements for these permits ensure shellfish taken from polluted areas would not be for immediate human consumption but would be for restoration purposes or would be subject to transplant to private beds for growout or for depuration prior to human consumption. The rule delegates authority to the Fisheries Director to issue a proclamation to designate sites for relocation where shellfish would otherwise be destroyed due to "maintenance dredging, construction, or other development activities." DMF employees developed the specific permit conditions for the SRP and the implementing proclamation for the SRP was issued by the Fisheries Director (SF-5-2023).

The SRP can be issued for relocating shellfish from areas open or closed to harvest. The requirement to relocate shellfish is only authorized as a condition of a Coastal Area Management Act (CAMA) permit issued through the Division of Coastal Management (DCM) for a development activity. The receiving sites for the relocated shellfish are designated by the Fisheries Resource Specialist involved with the CAMA permit and all designated receiving sites must be in areas closed to harvest. The SRP, properly following a CAMA permit, allows for the harvest and transport of polluted shellfish under DMF supervision from a closed area to receiving sites in the same or another closed area, and allows for the harvest and transport of shellfish from an open area outside of daily bag limits and minimum sizes.

The DMF has, by proclamation, required an SRP for all activities related to relocating shellfish to designated areas since May 2023 (SF-5-2023). N.C.G.S. § 150B-19.1 sets requirements for agencies in the rulemaking process, including for rules to be written in a clear and unambiguous manner. Now that the new permit has been established and the need for the permit and the general requirements for the permit are not variable, relocating the requirements of the SRP in 15A NCAC 03O .0503 would make it easier for stakeholders to find the requirements for the activities in which they participate.

*Relocating a Permit Condition from Proclamation to Rule
(15A NCAC 03O .0502)*

In 2024, the MFC adopted rule amendments to address occurrences of any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) refusing to allow DMF employees to obtain data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments provided the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees. The rule amendments became effective March 24, 2025. Consistent with that effort, similar amendments are needed to 15A NCAC 03O .0502, which sets general permit conditions, to relocate from proclamation to rule the permit condition that sets these same requirements.

*Adding Email as an Additional Means to Satisfy Call-In Requirements
(15A NCAC 03O .0503)*

Scientific and Educational Activity Permit (SEAP) and Weekend Trawling for Live Shrimp Permit (WTLS)

The SEAP may be issued to scientific/government and educational institutions for scientific or educational uses that would otherwise be unlawful that must be approved by the DMF. It is the DMF's responsibility to ensure only scientific and educational activities are permitted and these activities are monitored. An applicant's affiliation with a recognized research or educational institution is verified during the application process, providing better evaluation and monitoring of permit activities.

Effective July 1, 2015, N.C. Session Law 2015-241, Section 14.10A., Simplify Oyster Restoration Project Permitting, directed the DMF to specify that the SEAP may also be issued to a nongovernmental conservation organization for approved activities. The legislation defined a nongovernmental conservation organization as an organization whose primary mission is the conservation of natural resources. The DMF has included nongovernmental conservation organizations for SEAPs since that time. The SEAP exempts the holder from N.C. license, rule, proclamation, or statutory requirements for approved scientific, educational, or conservation activities. A conforming change to 15A NCAC 03O .0503, which sets specific permit conditions, is needed to add nongovernmental conservation organizations; the definition was added to 15A NCAC 03I .0101(1) effective June 1, 2022, consistent with the original definition from the law.

The WTLS is a permit that was created pursuant to the N.C. Shrimp Fishery Management Plan Amendment 1, adopted by the MFC in 2015. The amendment required the establishment of a permitted live shrimp bait fishery and directed the DMF to develop requirements for the permit after reviewing permitted operations in other states. Live shrimp are popular bait for recreational fishermen targeting spotted sea trout and red drum as well as other popular recreational finfish. Prior to the establishment of the WTLS, North Carolina did not manage shrimping for bait, and fishermen harvesting shrimp as live bait had to comply with rules and proclamations that were in place for shrimp harvested for consumption. The WTLS was added to MFC rule effective May 1, 2017.

The specific permit conditions in MFC rule for the SEAP and WTLS require permittees to call the DMF communications center to report use of the permit and specify activities and location. Informing Marine Patrol of the activity through communications can save valuable time and effort used to respond to permitted activity. Currently, calling the DMF communications center by phone is the only method listed in rule for satisfying the requirement to report activity for the permits.

Broadening the Definition of "Educational Institution"

(15A NCAC 03I .0101, 03O .0503)

SEAP and Coastal Recreational Fishing License (CRFL) Exemption Permit

As authorized by 15A NCAC 03O .0503, which sets specific permit conditions, SEAPs and CRFL Exemption Permits have been issued by the DMF to various entities since 2014 and 2008, respectively, to allow activities that would otherwise be unlawful that must be approved by the DMF. (Scientific or Educational Collection Permits were issued from 2002–2014; CRFL Exemption Permits were issued via proclamation from 2006 until January 1, 2008.) The CRFL Exemption Permit is for individuals or organizations seeking exemption from recreational fishing license requirements to conduct an organized fishing event held in coastal or joint fishing waters when the purpose of the event is consistent with the conservation objectives of the MFC. This includes individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with educational institutions. Most SEAPs are issued to universities, colleges, and community colleges for research activities and the collection of teaching specimens. Some SEAPs are issued to museums and aquariums for collections and educational displays, and others are issued to private groups, including nongovernmental conservation organizations and other educational organizations for teaching and educational displays. Environmental consulting firms, and federal and state agencies, including DMF, have also been issued SEAPs and CRFL Exemption Permits to meet various federal and state monitoring requirements. MFC Rule 15A NCAC 03I .0101(1) defines educational institutions, scientific institutions, and nongovernmental conservation organizations but does not include broad enough language to include elementary through high schools, nor educational enrichment organizations.

Adding Links to Webpages for Supporting Information

(15A NCAC 03O .0501, .0503)

MFC Rule 15A NCAC 03O .0501 sets procedures and requirements to obtain DMF-issued permits. Paragraph (a) includes items such as full name, physical address, mailing address, date of birth, current picture identification, and other requirements specific to business entities. Paragraph (p) of this rule states that permit applications shall be available at all DMF offices, but some permits are only issued at certain DMF offices. A mechanism is needed to accommodate changes in DMF infrastructure over time and provide better customer service, such as directing regulated stakeholders to a DMF webpage with the latest details about permits.

MFC Rule 15A NCAC 03O .0503 sets specific permit conditions. The rule includes requirements for the Striped Bass Dealer Permit in Subparagraph (e)(6), which requires all dealers obtain the permit in order to possess, buy, sell, or offer for sale striped bass taken from one of three harvest areas in North Carolina. A tag must be obtained from the DMF and affixed to each striped bass in order to track the fish in the markets. Part (e)(6)(C) of this rule states tags are available at DMF offices, but currently only the DMF Elizabeth City and Manteo offices issue tags. A mechanism is needed to accommodate changes in DMF infrastructure over time and provide better customer service, such as directing regulated stakeholders to a DMF webpage with the latest details about tags.

Notarizing Initial Permit General Conditions Form Instead of Permit Application

(15A NCAC 03O .0501)

Currently, 15A NCAC 03O .0501(a)(1) requires a permit applicant to have their application signature notarized if they are not appearing before a DMF license agent or other DMF employee. The intent is for the DMF to have proof that the applicant's identity was verified. If the permit is approved, the permittee is required to sign general and specific permit conditions forms, but neither of these forms are currently required to be notarized. There are instances where a permit is applied for but not approved, so it is an unnecessary burden on the regulated public to retain the requirement for an application signature to be notarized. Requiring the initial permit general conditions form to be notarized after the permit application is approved would be a more appropriate time in the permit issuance process to verify a permittee's identity rather than in the application phase. As the number of permit renewals by mail continues to

increase each year, it becomes increasingly important to continue to verify the identity of permittees that conduct business with the DMF by mail.

*Repealing the Horseshoe Crab Biomedical Use Permit
(15A NCAC 03O .0503)*

Horseshoe Crab Biomedical Use Permit

Management for horseshoe crabs falls under the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Horseshoe Crab (1998) and supporting addenda (I – VIII). It establishes state-by-state quotas in all Atlantic states for horseshoe crabs harvested for bait and includes the need for a permit to collect information on the use of horseshoe crabs for biomedical purposes. Blood is extracted from live adult horseshoe crabs for the production of LAL (Limulus Amebocyte Lysate), a clotting agent that detects pathogens in patients, drugs, and intravenous devices. As required by the Interstate Fishery Management Plan, all states where horseshoe crabs are captured for biomedical use must monitor and report monthly, and annual harvest of horseshoe crabs is required to be reported by biomedical facilities. All states must identify percent mortality up to the point of release (including harvest, shipping, handling, and bleeding mortality), harvest method, number or percent of males and females, disposition of bled crabs, and condition of holding environment of bled crabs prior to release. This detailed information is required as part of the annual compliance report for each state.

For North Carolina, the authority for the Horseshoe Crab Biomedical Use Permit was established in 15A NCAC 03O .0503 in 2000 in anticipation of an expansion of biomedical takes of horseshoe crabs to account for the removals from the population. However, only one permit has been issued where the permit holder sold LAL since the rule's inception in North Carolina. In other instances, the permit was issued for exploratory purposes to determine if the venture was worth pursuing further. No collection of horseshoe crabs occurred due to difficulties with establishing a facility, as was the case in the last permit issued in 2022. The permit needs to be discontinued due to lack of widespread use and the duties for DMF employees to track its use.

IV. AUTHORITY

G.S. § 113-134.	Rules.
G.S. § 113-168.2.	Standard Commercial Fishing License.
G.S. § 113.168.3.	Retired Standard Commercial Fishing License.
G.S. § 113-169.1.	Permits for gear, equipment, and other specialized activities authorized.
G.S. § 113-169.2.	Shellfish license for North Carolina residents without a SCFL.
G.S. § 113-169.3.	Licenses for fish dealers.
G.S. § 113-170.	Exportation and importation of fish and equipment.
G.S. § 113-170.3.	Record-keeping requirements.
G.S. § 113-170.4.	Rules as to possession, transportation, and disposition of fisheries resources.
G.S. § 113-174.	Definitions.
G.S. § 113-181.	Duties and powers of Department.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 113-210.	Under Dock Oyster Culture.
G.S. § 143B-289.52.	Marine Fisheries Commission - powers and duties.

15A NCAC 03H .0103	Proclamations, General
15A NCAC 03O .0502	General Permit Conditions
15A NCAC 03O .0504	Suspension and Revocation of Permits
15A NCAC 03O .0506	Special Permit Required for Specific Management Purposes

V. DISCUSSION

Adding Permits to Permanent Rule that are Currently Issued by Proclamation

*Requiring a Seafood Dealer that Reports Trip Tickets Electronically to Report Quota Monitoring Logs Electronically
(15A NCAC 03I .0101, .0114, 03O .0501, .0503)*

Dealer Permits for Quota Monitoring

The addition of the Estuarine Flounder Dealer Permit in 2022 caused a marked increase in the total number of dealers that held at least one permit for monitoring fisheries under a quota or allocation – from 59 dealers to 148 (a 151% increase). Only two biologists within the DMF are tasked with monitoring quotas from this expanded group of

stakeholders. This growth in permit holders necessitates clarification of reporting requirements and expansion of reporting methods, i.e., electronic means, to maximize reporting efficiency and accuracy and minimize burden on dealers and DMF employees. Reporting by "electronic means" incorporates the established N.C. Trip Ticket Software, fax, email, and text message, as well as future electronic means such as VESL; VESL will be a future web-based application that commercial seafood dealers can use to submit their trip tickets and quota monitoring logs electronically to the DMF from any computer, tablet, or smartphone.

There are two primary amendments proposed affecting this permit. First, the Estuarine Flounder Dealer Permit is proposed to be relocated from proclamation to 15A NCAC 03O .0503(e)(4), making it easier for stakeholders to find the requirements for the fishery in which they participate, which is consistent with the other dealer permits issued by the DMF. Due to the fisheries management strategy used in the estuarine flounder fishery, commercial harvest may close and reopen during one season, so the description of the commercial season is proposed to be amended in 15A NCAC 03O .0503(e)(1) to reflect that dealers do not need to report while their areas are closed to commercial harvest during the season, and in (e)(1)(B) for submitting the quota monitoring log no later than five days after the close of the commercial "harvest", not the commercial "season".

The second primary proposed amendment is to 15A NCAC 03O .0503(e)(1)(A), which would require licensed dealers who report their trip tickets electronically ("e-dealers") who hold any permit for quota monitored species to submit their quota monitoring logs by electronic means, saving significant dealer and DMF employee time and resources at no additional cost to the dealers. For the 2024 license year, 67 e-dealers hold permits for at least one quota monitored species. Of these, only 16 choose to report their daily quota monitoring logs by phone rather than electronic means. So, adding a requirement that e-dealers submit their quota monitoring logs through electronic means would only affect a small subsection of the overall group and would allot extra time for DMF employees to follow up by phone with dealers that have not submitted their quota monitoring logs, especially when commercial harvest for a quota monitored species has ended and final accounting needs to occur. Other than this one new requirement that affects only a portion of permit holders, relocating the Estuarine Flounder Dealer Permit from proclamation to rule would have no impact on holders of the permit as the application process, permit conditions, and other reporting requirements would not change; all DMF permits are issued at zero cost.

Related amendments are proposed to 15A NCAC 03I .0101(5) to add a definition for "quota monitoring log" and clarify it is distinct from the definition of "trip ticket". Regarding electronic reporting and for consistency with other MFC rules, reference to "web-based utilities" is included in the proposed definition for "quota monitoring log" and is proposed to be added to the existing definitions for "logbook" and "trip ticket". Proposed amendments to 15A NCAC 03I .0114(a)(7) and (a)(8) set the same recordkeeping requirements for quota monitoring logs as for trip tickets for licensed fish dealers but apply only to dealers holding a permit for monitoring fisheries under a quota or allocation, not all dealers.

In the future, the DMF recommends the MFC consider rule amendments to create a general dealer permit for quota monitoring to cover all fisheries that would need to be monitored under a quota. It is anticipated that more fisheries stocks will need to be monitored and managed under a quota-based system, not less fisheries. If the current system is maintained, seafood dealers who wish to operate in these fisheries will need to get multiple permits. The increasing number of permits will put an administrative burden on seafood dealers as well as an administrative burden on the DMF. Seafood dealers will be required to manage more records during their daily operations and the DMF will continually need to amend 15A NCAC 03O .0503 to add new permits. A more effective solution in the future is to develop a dealer permit where the dealer can add fisheries in which they wish to be permitted. The structure could be similar to how a seafood dealer's license works where a seafood dealer can add a variety of species categories for the types of seafood in which they wish to deal. The reporting responsibilities would not change. But instead of getting multiple permits, a dealer would only be required to obtain a single permit that has multiple categories. This permitting structure is also similar to how GARFO issues federal permits with seafood dealers, where seafood dealers are issued a single permit with each species added to the permit as an endorsement. The structure is also like how the SERO issues permits. While SERO issues individual permits for each species, they are all issued under one permit number. In this fashion, each individual species permit is similar to an endorsement.

The proposed permit structure would need to be developed and tested by the N.C. Department of Information Technology. This particular design for the dealer permit would be a major change from the current structure and it is likely the database that licenses and permits are issued from, the Fisheries Information Network or "FIN," would need

to be modified to accommodate the new permit structure. MFC Rule 15A NCAC 03O .0503 would also need to be modified to remove the individual dealer permits and add a general dealer permit. Requirements for the information technology infrastructure needed to make this change necessitate careful consideration by the DMF about unintended consequences, and long-term planning, including potential budget needs.

Estuarine Gill Net Permit (EGNP)

The EGNP is proposed to be relocated from proclamation to 15A NCAC 03O .0503(f), making it easier for stakeholders to find the requirements for the fishery in which they participate. Additional proposed amendments to 15A NCAC 03O .0501(b) would clarify existing requirements for holders of an EGNP to hold a valid Recreational Commercial Gear License, Standard Commercial Fishing License, or Retired Standard Commercial Fishing License. This is not a new requirement but would be relocated from proclamation to rule to aid in the clarity of existing requirements for regulated stakeholders. Relocating the permit requirements in rule would have no impact on holders of the permit as the application process, permit conditions, and reporting requirements would not change; all DMF permits are issued at zero cost.

Relocating the EGNP in rule would continue the DMF's efforts to remain in compliance with the ITPs. The specific permit conditions outlined in the EGNP are critical to its functionality and most conditions are not expected to vary for the duration of the current 10-year ITP. Conditions for EGNP holders to be accessible to DMF employees for setting up observer trips and collecting data or samples are key to the utility of the EGNP as are conditions relating to refusing to allow DMF employees to obtain that data (discussed further on page 9), which protects the safety of DMF employees. Therefore, these types of conditions are proposed to be moved into rule. However, there may be a need to modify certain conditions in the future with the variability of the non-exempt gill net fisheries. Therefore, conditions such as specific timelines or contact information would remain in the EGNP's specific permit condition form, as they may be subject to change; seasonal openings as well as gear requirements would continue to be implemented by proclamation due to the variable nature of the conditions of the fishery.

Shellfish Lease Restoration Permit (SLRP)

The SLRP is proposed to be relocated from proclamation to 15A NCAC 03O .0503(j), making it easier for stakeholders to find the requirements for the fishery in which they participate. Relocating this permit to rule would also continue to enable the use of shellfish from shellfish leases and franchises for restoration purposes, which is an increasingly viable commercial option. The list of specific conditions of the permit proposed in 15A NCAC 03O .0503(j) establish the need for the SLRP ((j)(1)), the activities covered by the SLRP ((j)(2)), and the requirements of the permit holder while conducting permitted activities ((j)(3)-(j)(5)). Because the shellfish transported for restoration projects are sold, the requirements would apply to the production of the source shellfish lease or franchise and need to be properly accounted for through the Trip Ticket program ((j)(3)). The requirement of an annual report of shellfish transported through an SLRP would enable the Trip Ticket program to continue to verify and separate the shellfish sold for restoration from the remaining shellfish from shellfish leases and franchises sold for human consumption ((j)(4)). The requirement of calling the DMF prior to using the permit would enable the DMF to conduct any federal or state required tracking or supervision of the transport of shellfish to a closed area ((j)(5)). Relocating the permit requirements in rule would have no impact on holders of the permit as the application process, permit conditions, and reporting requirements would not change; all DMF permits are issued at zero cost.

Shellfish Relocation Permit (SRP)

The SRP is proposed to be relocated from proclamation to 15A NCAC 03O .0503(k), making it easier for stakeholders to find the requirements for the fishery in which they participate. Relocating this permit to rule would also continue to enable the transfer of shellfish for protection purposes not related to human consumption from areas where shellfish would otherwise be destroyed due to CAMA permitted development activity. The proposed list of specific conditions of the permit establishes the need for the SRP (15A NCAC 03O .0503(k)(1)) and the factors that are considered prior to the issuance of the SRP ((k)(2)). The need for the permit is consistent with recent amendments to 15A NCAC 03K .0101(a) by only allowing the transport of shellfish that would be destroyed by maintenance dredging, construction, or other development activities through the SRP ((k)(1)). To receive an SRP, a qualifying development activity must first receive a CAMA permit for the development and must then be evaluated by the DMF to qualify as a transfer that can be properly supervised by DMF employees ((k)(2)). This evaluation would be conducted by a Fisheries Resource Specialist in coordination with DCM representatives. Relocating the permit requirements in rule would have no impact on holders of the permit as the application process, permit conditions, and reporting requirements would not change; all DMF permits are issued at zero cost.

*Relocating a Permit Condition from Proclamation to Rule
(15A NCAC 03O .0502)*

In 2024, the MFC adopted rule amendments to address occurrences of any licensee or person engaged in regulated activity under Chapter 113, Subchapter IV, of the General Statutes (e.g., fishing) refusing to allow DMF employees to obtain data for the conservation of marine and estuarine resources, and data for the protection of public health related to the public health programs that fall under the authority of the MFC. Additional amendments provided the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees. The rule amendments became effective March 24, 2025.

Consistent with that rulemaking effort, amendments are proposed to 15A NCAC 03O .0502 to relocate from proclamation to rule the current permit condition that sets these same requirements. The proposed rule amendments achieve this by referring to 15A NCAC 03I .0113, which sets these requirements for any licensee or person engaged in regulated fishing activity. This mechanism is the same one used in four other MFC rules that refer to 03I .0113 to set the same requirements (15A NCAC 03O .0101, .0109, .0112, .0301). The proposed amendments to 15A NCAC 03O .0502 would bring consistency across rules and add clarity for regulated stakeholders.

*Adding Email as an Additional Means to Satisfy Call-In Requirements
(15A NCAC 03O .0503)*

Scientific and Educational Activity Permit (SEAP) and Permit for Weekend Trawling for Live Shrimp (WTLS)

The specific permit conditions in MFC rule for the SEAP and WTLS require permittees to call the DMF communications center to report use of the permit and specify activities and location. Informing Marine Patrol of the activity through communications can save valuable time and effort used to respond to permitted activity. Currently, calling the DMF communications center by phone is the only method listed in 15A NCAC 03O .0503(g) and (i) for satisfying the requirement to report activity for the permits. Since the SEAP and WTLS permits were established in rule, the amount of communication via email between permittees and the DMF has increased. Adding email as a method to satisfy the requirement to report permit activity to the DMF communications center would provide several benefits, including making it easier for regulated stakeholders to forward required information to the DMF and improving the tracking of activity by the DMF.

*Broadening the Definition of "Educational Institution"
(15A NCAC 03I .0101, 03O .0503)*

SEAP and Coastal Recreational Fishing License (CRFL) Exemption Permit

MFC Rule 15A NCAC 03I .0101(1)(b) defines "educational institution" but does not include broad enough language to include elementary through high schools, nor educational enrichment organizations, many of which apply for the SEAP or CRFL Exemption Permit and would otherwise be approved. Proposed amendments expand the definition of "educational institution" to add a reference to the statutorily defined phrase "public school unit" (N.C.G.S. § 115C-5(7a)), which includes charter schools and elementary through high schools, and add private schools and organizations whose mission includes education. These changes more closely align with the original purpose of the SEAP and CRFL Exemption Permit and would clarify whether these educational entities can be issued a SEAP or CRFL Exemption Permit. Minor proposed amendments to 15A NCAC 03O .0503(d)(2)(C) and (i)(3) point to the expanded definition of "educational institution" in 15A NCAC 03I .0101(1)(b). During the SEAP application process, the applicant, the applicant's affiliation(s), and the proposed activities are reviewed by DMF employees before the permit is issued or denied. This process ensures the applicant and entity have the proper credentials to hold a SEAP and the proposed activity is evaluated before a SEAP is issued.

During the CRFL Exemption Permit application process, the purpose of the organized fishing event to be held in coastal or joint fishing waters is reviewed by DMF employees to ensure the event is consistent with the conservation objectives of the MFC. Those objectives include when individuals receive instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with educational institutions, so broadening the definition of "educational institution" in 15A NCAC 03I .0101(1)(b) further clarifies the conservation objectives of the MFC in the issuance of these permits.

With the expanded definition of "educational institution", text in 15A NCAC 03O .0503(d)(2) is proposed to be deleted, as it is unnecessary.

Previously discussed on page 4 of this paper, effective June 1, 2022, an amendment was made to 15A NCAC 03I .0101(1)(e) to add a new definition for "nongovernmental conservation organization" pursuant to Session Law 2015-241, Section 14.10A for the issuance of SEAPs. An amendment is proposed to the history note of this rule to add a reference to the authorizing law.

Adding Links to Webpages for Supporting Information

(15A NCAC 03O .0501, .0503)

As technology develops, more agencies and businesses are using websites to inform the public more quickly and feasibly. Not only are websites informative, but they allow the user to find the most up-to-date information on an easily accessible platform from any device with internet capabilities. In an effort to provide the best customer service, a link to a webpage is proposed to be added to 15A NCAC 03O .0501(p) to guide the public to a location on the DMF website that displays which DMF offices issue particular permits, because not all DMF offices issue all types of permits. For many permits, the webpage would also provide access for the public to print their own permit applications rather than having to come into a DMF office to physically obtain one.

A link to a separate webpage is proposed to be added to 15A NCAC 03O .0503(e)(6)(C) to guide the public to a location on the DMF website that displays which DMF offices provide striped bass tags, which is a requirement for the holder of a Striped Bass Dealer Permit. A tag must be obtained from the DMF and affixed to each striped bass in order to track the fish in the markets. The rule states tags are available at DMF offices, but currently only the DMF Elizabeth City and Manteo offices issue tags. Having a webpage that displays which DMF offices issue tags would accommodate changes in DMF infrastructure over time and provide better customer service.

While not directly related, these proposed changes are consistent with the Department of Environmental Quality's Permitting Transformation Program. This is a department-wide initiative to update and improve the permit process and provide better access to permit information, which benefits permitted entities as well as the public.

Notarizing Initial Permit General Conditions Form Instead of Permit Application

(15A NCAC 03O .0501)

There are instances where a permit is applied for but not approved, so it is an unnecessary burden on the regulated public to retain the requirement for their application signature to be notarized when the application may not get approved. Instead, requiring the initial permit general conditions form to be notarized would be a more appropriate time in the permit issuance process to verify a permittee's identity rather than in the application phase. Since this notarized form remains on file with the DMF, it is not necessary to have permit renewals or additional permit forms notarized. As of the 2023-2024 license and permit season, all current permittees have a notarized form on file with the DMF. For new permittees obtaining permits in person, all DMF license agents are notaries, so there would be no additional cost or burden for those permittees. A new permittee obtaining their initial permit by mail would be required to have their permit general conditions form notarized. The maximum fee for a notarial act in North Carolina is ten dollars per notarized signature; however, a notary can opt to provide the service for free. A new permit applicant would no longer be required to have their application signature notarized, regardless of whether they mailed their application to the DMF or came to a DMF office to submit their application. The proposed amendment is expected to decrease the number of documents that need to be notarized. Amendments are proposed to 15A NCAC 03O .0501(a)(1) and (i) to make these changes and clarifications. Current Paragraph (m) of this rule is also proposed to occur earlier in the rule as Paragraph (j), to put in sequence related requirements.

Repealing the Horseshoe Crab Biomedical Use Permit

(15A NCAC 03O .0503)

Horseshoe Crab Biomedical Use Permit

States can choose or not choose to allow the taking of horseshoe crabs for biomedical use through a permit. The ASMFC Interstate Fishery Management Plan for Horseshoe Crab encourages biomedical harvesters to provide the horseshoe crabs to the bait industry and count those crabs towards the bait harvest annual quota. Since the expansion of this industry has not shown the anticipated growth in over 25 years, the Horseshoe Crab Biomedical Use Permit is

proposed to be deleted from 15A NCAC 03O .0503(f). This proposed action is not expected to have an impact on the industry and is consistent with N.C.G.S. § 150B-19.1(a) for an agency to adopt only rules that are necessary to serve the public interest. Eliminating the permit would not disallow use of horseshoe crabs for biomedical purposes in North Carolina, but access to horseshoe crabs would be limited to the annual open commercial bait harvest season (January–May) and counted towards the annual bait quota for compliance with the Interstate Fishery Management Plan. For the N.C. Horseshoe Crab Biomedical Use Permits that were issued, it was time intensive for DMF employees to collect the information from permit holders to meet the Interstate Fishery Management Plan compliance requirements, regardless of whether LAL was sold. The only impact on DMF employees from the elimination of the permit would be to notify the ASMFC of North Carolina's change of status via its annual compliance report.

Clarifying, Conforming, and Grammatical Rule Amendments

(15A NCAC 03I .0101, .0114, 03O .0501, .0502, .0503)

In numerous MFC rules, including rules proposed in this issue paper, there is a mix of the usage of "permit holder" and "permittee". Rule 15A NCAC 03I .0101(5)(b) defines "designee" as 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. Rule 15A NCAC 03I .0101(5)(e) defines "holder" as a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment. However, there is no definition for "permittee".

A new definition of "permittee" is proposed in 15A NCAC 03I .0101(5)(l) to address and clarify the ubiquitous and interchangeable use of "permittee" and "permit holder" throughout MFC rules. The definition of "permittee" mimics the definition of "licensee", except that the wording covers a person "holding a valid permit" as is worded in the "licensee" definition for licenses as well as someone who no longer holds the permit, to accommodate enforcing certain permit conditions that remain in play after the permit is no longer valid. For example, a person has 30 days to remove gear associated with the permit after revocation or expiration of a permit. The definition of "permittee" needs to extend to being able to enforce these types of permit requirements.

Additionally, proposed amendments to the existing definition of "licensee" and the proposed definition of "permittee" are consistent with other MFC rules by referring to "resources governed by any provision of Subchapter 113 of the North Carolina General Statutes under the authority of the Marine Fisheries Commission or any rule adopted by the Marine Fisheries Commission pursuant to Subchapter 113" in lieu of referring merely to "marine fisheries resources" or "marine or estuarine resources". Proposed amendments to 15A NCAC 03O .0501(a)(4) are also consistent with this same language.

A conforming amendment is proposed to 15A NCAC 03I .0114(a)(1) to clarify a fish dealer is required to submit a trip ticket for fish not sold, consistent with "transaction" in N.C.G.S. § 113-168.2 and requirements of N.C.G.S. § 113-170.3 and 15A NCAC 03I .0123 for commercial harvest reporting requirements. This clarification is being proposed while the recordkeeping requirements rule is being amended for permit-related needs (see pages 6-8 for Dealer Permits for Quota Monitoring).

Two minor grammatical amendments are proposed to 15A NCAC 03O .0501(d) and (e) for consistency throughout MFC rules. The current text reads "a permittee and his designees" and the proposed text reads "a permittee and a permittee's designees". These amendments will make the usage of pronouns in this rule consistent with other MFC rules.

There are four occurrences of the DMF phone number in 15A NCAC 03O .0503. Effective January 17, 2024, the DMF phone number was changed. Proposed amendments to 15A NCAC 03O .0503 (e)(1)(A), (g)(3)(E), (i)(7), and (j)(5) reflect the new phone number of 252-515-5500.

1 **VI. PROPOSED RULES**

2
3 15A NCAC 03I .0101 is proposed for amendment as follows:

4
5 **SUBCHAPTER 03I – GENERAL RULES**

6
7 **SECTION .0100 – GENERAL RULES**

8
9 **15A NCAC 03I .0101 DEFINITIONS**

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

11 (1) enforcement and management terms:

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

- 1 (e) "Nongovernmental conservation organization" means an organization whose primary
2 mission is the conservation of natural resources. For the purpose of this Chapter, a
3 determination of the organization's primary mission is based upon the Division of Marine
4 Fisheries' consideration of the organization's publicly stated purpose and activities.
- 5 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
- 6 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
7 or deleterious substances, or marine biotoxins that render the consumption of
8 shellfish from those growing waters hazardous. This includes poisonous or
9 deleterious substances as listed in the latest approved edition of the National
10 Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan
11 Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action
12 Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances
13 in Seafood, which is incorporated by reference, including subsequent amendments
14 and editions. A copy of the reference material can be found at
15 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
16 [sanitation-program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost;
- 17 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
18 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
19 outfall that may contaminate shellfish and cause a food safety hazard as defined
20 in 15A NCAC 18A .0301;
- 21 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
22 18A .0901 to be in or adjacent to a marina;
- 23 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
24 18A .0901 to be impacted by other potential sources of pollution that render the
25 consumption of shellfish from those growing waters hazardous, such as a
26 wastewater treatment facility that does not contaminate a shellfish area when it is
27 operating normally but will contaminate a shellfish area and shellfish in that area
28 when a malfunction occurs; or
- 29 (v) where the Division is unable to complete the monitoring necessary to determine
30 the presence of contamination or potential pollution sources.
- 31 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
32 area, means, and methods where take or possession is for a recreational purpose.
- 33 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
34 purpose.
- 35 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
36 the Fisheries Director through proclamation authority.
- 37 (j) "Scientific institution" means one of the following entities:

- 1 (i) an educational institution as defined in this Item;
- 2 (ii) a state or federal agency charged with the management of marine or estuarine
- 3 resources; or
- 4 (iii) a professional organization or secondary school working under the direction of,
- 5 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
- 6 of this Item.
- 7 (2) fishing activities:
- 8 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
- 9 marine or estuarine resources, or other non-native species that may thrive if introduced into
- 10 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
- 11 rearing on private bottom (with or without the superadjacent water column) or in a
- 12 controlled environment. A controlled environment provides and maintains throughout the
- 13 rearing process one or more of the following:
- 14 (i) food;
- 15 (ii) predator protection;
- 16 (iii) salinity;
- 17 (iv) temperature controls; or
- 18 (v) water circulation, utilizing technology not found in the natural environment.
- 19 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
- 20 to work the gear and be within 100 yards of any gear in use by that person at all times.
- 21 Attended does not include being in a building or structure.
- 22 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
- 23 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
- 24 controlled environment. A controlled environment provides and maintains throughout the
- 25 shedding process one or more of the following:
- 26 (i) food;
- 27 (ii) predator protection;
- 28 (iii) salinity;
- 29 (iv) temperature controls; or
- 30 (v) water circulation, utilizing technology not found in the natural environment. A
- 31 shedding operation does not include transporting pink or red-line peeler crabs to
- 32 a permitted shedding operation.
- 33 (d) "Depurate" or "deputation" has the same meaning as defined in the 2019 revision of the
- 34 NSSP Guide for the Control of Molluscan Shellfish, Section I: Purpose and Definitions.
- 35 This definition is incorporated by reference, not including subsequent amendments and
- 36 editions. A copy of the reference material can be found at

1 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
2 [program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost.

3 (e) "Long haul operation" means fishing a seine towed between two vessels.

4 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
5 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.

6 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
7 not.

8 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
9 as defined in G.S. 113-168.

10 (i) "Swipe net operations" means fishing a seine towed by one vessel.

11 (j) "Transport" means to ship, carry, or cause to be carried or moved by public or private
12 carrier by land, sea, or air.

13 (k) "Use" means to employ, set, operate, or permit to be operated or employed.

14 (3) gear:

15 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed
16 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch
17 is dipped or bailed.

18 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom
19 at both ends or with one end anchored or attached to the bottom and the other end attached
20 to a vessel.

21 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal
22 Fishing Waters except:

23 (i) cast nets;

24 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension
25 no larger than 18 inches and that by design is collapsed at all times when in the
26 water, except when it is being retrieved from or lowered to the bottom;

27 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop
28 or frame to which the net is attached not exceeding 60 inches along the perimeter;

29 (iv) gigs or other pointed implements that are propelled by hand, whether or not the
30 implement remains in the hand;

31 (v) hand operated rakes no more than 12 inches wide and weighing no more than six
32 pounds and hand operated tongs;

33 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-
34 bait trotline;

35 (vii) landing nets used to assist in taking fish when the initial and primary method of
36 taking is by the use of hook and line;

37 (viii) minnow traps when no more than two are in use;

- 1 (ix) seines less than 30 feet in length;
- 2 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by
- 3 mechanical means, including elastic tubing or bands, pressurized gas, or similar
- 4 means.
- 5 (d) "Corkline" means the support structure a net is attached to that is nearest to the water
- 6 surface when in use. Corkline length is measured from the outer most mesh knot at one end
- 7 of the corkline following along the line to the outer most mesh knot at the opposite end of
- 8 the corkline.
- 9 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth
- 10 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 11 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure
- 12 attached to the bottom, at both ends of the net.
- 13 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or
- 14 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one
- 15 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,
- 16 through which fish enter the enclosure. The portion of the net designed to hold or trap fish
- 17 is completely enclosed in mesh or webbing, except for the openings for fish passage into
- 18 or out of the net (funnel area).
- 19 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills
- 20 in its mesh as a result of net design, construction, mesh length, webbing diameter, or
- 21 method in which it is used.
- 22 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest
- 23 to the water surface when in use. Headrope length is measured from the outer most mesh
- 24 knot at one end of the headrope following along the line to the outer most mesh knot at the
- 25 opposite end of the headrope.
- 26 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or
- 27 frames. The net has one or more internal funnel-shaped openings with tapered ends directed
- 28 inward from the mouth, through which fish enter the enclosure. The portion of the net
- 29 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the
- 30 openings for fish passage into or out of the net (funnel area).
- 31 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,
- 32 wire, or similar material set vertically in the water and held in place by stakes or anchors
- 33 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead
- 34 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 35 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,
- 36 and other rakes when towed by engine power, patent tongs, kicking with propellers or

- 1 deflector plates with or without trawls, and any other method that utilizes mechanical
2 means to harvest clams.
- 3 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other
4 rakes when towed by engine power, and any other method that utilizes mechanical means
5 to harvest oysters.
- 6 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite
7 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- 8 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead
9 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and
10 lead(s) are not conical, nor are they supported by hoops or frames.
- 11 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use
12 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 13 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish
14 by encirclement and confining fish within itself or against another net, the shore or bank
15 as a result of net design, construction, mesh length, webbing diameter, or method in which
16 it is used.
- 17 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations
18 of fish species throughout their entire life cycle, including early growth and development, as well
19 as forage species utilized in the food chain. Fish habitats in all Coastal Fishing Waters, as determined
20 through marine and estuarine survey sampling, are:
- 21 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems
22 utilized by post-larval and later juvenile anadromous fish.
- 23 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of
24 anadromous fish has been documented in Division sampling records through direct
25 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 26 (c) "Coral" means:
- 27 (i) fire corals and hydrocorals (Class Hydrozoa);
- 28 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
- 29 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which
30 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),
31 and sea pansies (*Renilla* sp.).
- 32 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and
33 live oysters of varying density.
- 34 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard
35 substrate, excluding mollusk shells, but including dead coral or rock. Living marine
36 organisms associated with hard bottoms, banks, reefs, and live rock include:
- 37 (i) Coralline algae (Division Rhodophyta);

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

1 of above-ground leaves, below-ground rhizomes, or reproductive structures
2 associated with one or more SAV species and include the sediment within these
3 areas; or

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

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

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

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

1 (iii) for recreational fishing operations, when fish are retained in possession by the
2 fisherman.

3 (g) "Licensee" means any person holding a valid license from the ~~Department~~ Division to take
4 or deal in ~~marine fisheries resources, resources governed by any provision of Subchapter~~
5 113 of the North Carolina General Statutes under the authority of the Marine Fisheries
6 Commission or any rule adopted by the Marine Fisheries Commission pursuant to
7 Subchapter 113, except as otherwise defined in 15A NCAC 03O .0109.

8 (h) "Logbook" means paper forms provided by the Division and electronic data files generated
9 from software or web-based utilities provided by the Division for the reporting of fisheries
10 statistics by persons engaged in commercial or recreational fishing or for-hire operators.

11 (i) "Master" means captain or operator of a vessel or one who commands and has control,
12 authority, or power over a vessel.

13 (j) "New fish dealer" means any fish dealer ~~making application applying~~ for a fish dealer
14 license who did not possess a valid dealer license for the previous license year in that name.
15 For purposes of license issuance, adding new categories to an existing fish dealers license
16 does not constitute a new dealer.

17 (k) "Office of the Division" means physical locations of the Division conducting license and
18 permit transactions in Wilmington, Morehead City, Washington, and Roanoke Island,
19 North Carolina. Other businesses or entities designated by the Secretary to issue
20 Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not
21 considered Offices of the Division.

22 (l) "Permittee" means any person who has been issued a permit from the Division to take or
23 deal in resources governed by any provision of Subchapter 113 of the North Carolina
24 General Statutes under the authority of the Marine Fisheries Commission or any rule
25 adopted by the Marine Fisheries Commission pursuant to Subchapter 113.

26 (m) "Quota monitoring log" means paper forms provided by the Division and electronic data
27 files generated from software or web-based utilities provided by the Division for the
28 reporting of fisheries statistics by licensed fish dealers who hold dealer permits for
29 monitoring fisheries under a quota or allocation.

30 ~~(n)~~(n) "Responsible party" means the person who coordinates, supervises, or otherwise directs
31 operations of a business entity, such as a corporate officer or executive level supervisor of
32 business operations, and the person responsible for use of the issued license in compliance
33 with applicable statutes and rules.

34 ~~(o)~~(o) "Tournament organizer" means the person who coordinates, supervises, or otherwise
35 directs a recreational fishing tournament and is the holder of the Recreational Fishing
36 Tournament License.

1 15A NCAC 03I .0114 is proposed for amendment as follows:
2

3 **15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS**

4 (a) It shall be unlawful for a licensed fish dealer:

5 (1) to record false information on the North Carolina trip ticket or to fail to legibly record all items on
6 the North Carolina trip ticket for each ~~transaction~~transaction, including for fish harvested but not
7 sold pursuant to 15A NCAC 03I .0123, and submit the trip ticket in accordance with G.S. 113-168.2,
8 including the following:

9 (A) fisherman's name;

10 (B) fisherman's North Carolina license number;

11 (C) dealer's North Carolina license number;

12 (D) start date of trip, including year, month, and day;

13 (E) unload date of trip, including year, month, and day;

14 (F) North Carolina Division of Marine Fisheries Vessel Identification Number or indicate if
15 no vessel was used;

16 (G) crew size;

17 (H) gear fished;

18 (I) waterbody fished;

19 (J) species landed;

20 (K) quantity of each species landed in pounds, numbers of fish, bushels, or other units of
21 measurement;

22 (L) disposition of species;

23 (M) transaction number;

24 (N) number of crab pots or peeler pots fished, if applicable;

25 (O) state where species was taken if other than North Carolina;

26 (P) lease number, if applicable;

27 (Q) bottom type, if applicable; and

28 (R) shellfish harvest area, if applicable.

29 (2) to fail to provide to the Division a Trip Ticket Submittal/Transaction form indicating the number of
30 transactions that occurred during the previous month;

31 (3) to fail to make paper copies or electronic copies of trip tickets or N.C. Trip Ticket Program Dock
32 Tickets available at the dealer location for inspection by Marine Fisheries inspectors;

33 (4) to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual
34 average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers
35 subject to the electronic reporting requirement shall be notified by the Division via certified mail
36 and within 120 days of receipt shall:

37 (A) initiate electronic file transfer of trip tickets; and

1 (B) continue to report by electronic file transfer until the dealer no longer holds a fish dealer
2 license with finfish or consolidated categories;

3 (5) to fail to use software or web-based utilities authorized by the Division when reporting
4 electronically; and

5 (6) to fail to keep all trip tickets and all supporting documentation for each transaction including
6 receipts, checks, bills of lading, records, electronic files, and accounts for a period of not less than
7 ~~three years-years; and~~

8 (7) to fail to submit quota monitoring logs in accordance with 15A NCAC 03O .0503 if the licensed
9 fish dealer holds a dealer permit for monitoring fisheries under a quota or allocation; and

10 (8) to fail to keep all quota monitoring logs including electronic files for a period of not less than three
11 years.

12 (b) It shall be unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer,
13 at the time of transaction, the following:

14 (1) a current and valid license or permit to sell the type of fish being offered and if a vessel is used, the
15 Commercial Fishing Vessel Registration; and

16 (2) complete and accurate information on harvest method and area of catch and other information
17 required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

18 (c) It shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of
19 lading, or other shipping documentation provided by the shipping dealer showing the following items:

20 (1) name of the consignee;

21 (2) name of the shipper;

22 (3) date of the shipment;

23 (4) name of fish being shipped; and

24 (5) quantity of each fish being shipped.

25 In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping
26 records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers
27 are exempt from this Paragraph.

28 (d) It shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina
29 licensed fish dealer completing all the recordkeeping requirements in G.S. 113-168.2(i).

30 (e) It shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for
31 inspection by Marine Fisheries inspectors or other agents of the Fisheries Director written documentation of purchase
32 showing the following items:

33 (1) name of the licensed fish dealer;

34 (2) name of the purchaser;

35 (3) date of the purchase;

36 (4) name of fish purchased; and

37 (5) quantity of each fish purchased.

1 (f) It shall be unlawful for a holder of a Fish Dealer License to have fish in possession at a licensed location without
2 written documentation from a licensed fish dealer or a completed North Carolina trip ticket to show the quantity and
3 origin of all fish.

4
5 *History Note: Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 113-*
6 *182; 143B-289.52;*

7 *Eff. March 1, 1994;*

8 *Recodified from 15A NCAC 3I .0014 Eff. December 17, 1996;*

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

10 *Amended Eff. June 1, 2013; August 1, 2000;*

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

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

13

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; contact;~~
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 for violation of any provision of Subchapter 113 of the North Carolina General
19 Statutes under the authority of the Marine Fisheries Commission or any rule adopted by the Marine
20 Fisheries Commission pursuant to Subchapter 113 during the previous three years; and
21 (5) for permit applications from business entities:
22 (A) the business name;
23 (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC
24 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
25 (C) the name, address, and phone number of responsible party and other identifying
26 information required by this Subchapter or rules related to a specific permit;
27 (D) for a corporation applying for a permit in a corporate name, the current articles of
28 incorporation and a current list of corporate officers;
29 (E) for a partnership that is established by a written partnership agreement, a current copy of
30 such agreement shall be provided when applying for a permit; and
31 (F) for business entities other than corporations, copies of current assumed name statements if
32 filed with the Register of Deeds office for the corresponding county and copies of current
33 business privilege tax certificates, if applicable.

34 (b) A permittee shall hold a valid:

- 35 (1) Recreational Commercial Gear License, Standard Commercial Fishing License, or Retired Standard
36 Commercial Fishing License to hold an Estuarine Gill Net Permit.
37 ~~(+)(2)~~ Standard or Retired Standard Commercial Fishing License ~~in order~~ to hold:

- 1 (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
- 2 (B) a Permit for Weekend Trawling for Live Shrimp; or
- 3 (C) a Pound Net Set Permit.

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

6 ~~(2)~~(3) Fish Dealer License in the proper category ~~in order~~ to hold dealer permits for monitoring fisheries
7 under a quota or allocation for that category.

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

10 (d) If mechanical methods to take shellfish are used, a permittee and ~~his-a permittee's~~ designees shall hold a valid
11 Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement ~~in order~~ for a permittee to
12 hold a:

- 13 (1) Depuration Permit;
- 14 (2) Permit to Transplant Oysters from Seed Oyster Management Areas; or
- 15 (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as
16 provided in G.S. 113-169.2.

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

- 20 (1) Depuration Permit; or
- 21 (2) Permit to Transplant Oysters from Seed Oyster Management Areas.

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 within two business days to the applicant
6 with the deficiency in the 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 and .0505,
9 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules .0502 and .0503 of this Section, as applicable to the
10 requested permit. The permittee's signature on the initial permit general conditions form shall be notarized. In the case
11 of a person holding more than one permit, the permittee's signature on the permit general conditions form shall be
12 notarized for the initial permit issued but shall not be required for subsequent permits.

13 (j) For permit renewals, the permittee's signature on the specific condition form shall certify all information is true
14 and accurate. Notarized signatures on renewal permits shall not be required.

15 ~~(k)~~ (k) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall
16 evaluate the following factors:

- 17 (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries
18 Commission;
- 19 (2) whether the permit application meets the requirements for the permit; and
- 20 (3) whether the applicant has a history of eight or more violations of any provision of Subchapter 113
21 of the North Carolina General Statutes under the authority of the Marine Fisheries Commission or
22 any rule adopted by the Marine Fisheries Commission pursuant to Subchapter 113 within 10 years.

23 ~~(l)~~ (l) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit
24 application and the reasons therefor. The applicant may submit further information or reasons why the permit
25 application should not be denied or modified.

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

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

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

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

1 (p) ~~Permit applications shall be available at all Division of Marine Fisheries offices. A list of permits and the location~~
2 ~~where each permit application is available is on the Division's website at <https://deq.nc.gov/dmf-permit-info>.~~

3
4 *History Note:* Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;
5 Temporary Adoption Eff. September 1, 2000; May 1, 2000;
6 Eff. April 1, 2001;
7 Temporary Amendment Eff. October 1, 2001;
8 Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,
9 2007; September 1, 2005; April 1, 2003; August 1, 2002;
10 Readopted Eff. April 1, 2019;
11 Amended Eff. March 24, ~~2025~~, 2025;
12 Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).
13

1 15A NCAC 03O .0502 is proposed for amendment as follows:
2

3 **15A NCAC 03O .0502 GENERAL PERMIT CONDITIONS**

4 (a) It shall be unlawful to violate any permit condition.

5 (b) The following conditions shall apply to all permits issued by the Fisheries Director:

6 (1) it shall be unlawful to:

7 (A) operate under the permit except in areas, at times, and under conditions specified on the
8 permit.

9 (B) operate under a permit without having the permit or copy thereof in possession of the
10 permittee or the permittee's designees at all times of operation and the permit or copy
11 thereof shall be ready at hand for inspection, except for a Pound Net Set Permit.

12 (C) operate under a permit without having a current picture identification in possession and
13 ready at hand for inspection.

14 (D) refuse to allow inspection and sampling of a permitted activity by an agent of the Division
15 of Marine Fisheries.

16 (E) fail to provide complete and accurate information requested by the Division in connection
17 with the permitted activity.

18 (F) provide false information in the application for initial issuance, renewal, or transfer of a
19 permit.

20 (G) hold a permit issued by the Fisheries Director if not eligible to hold any license required as
21 a condition for that permit as stated in Rule .0501 of this Section.

22 (H) fail to provide reports within the timeframe required by the specific permit conditions.

23 (I) fail to keep such records and accounts as required by the rules in this Chapter for
24 determination of conservation policy, equitable and efficient administration and
25 enforcement, or promotion of commercial or recreational fisheries.

26 (J) assign or transfer permits issued by the Fisheries Director, except for a Pound Net Set
27 Permit as authorized by 15A NCAC 03J .0504.

28 (K) fail to participate in and provide accurate information for data collection in accordance
29 with 15A NCAC 03I .0113 and for survey programs administered by the Division.

30 (2) the Fisheries Director or the Fisheries Director's agent may, by conditions of the permit, impose on
31 a commercial fishing operation and for recreational purposes any of the following restrictions for
32 the permitted purposes:

33 (A) specify time;

34 (B) specify area;

35 (C) specify means and methods;

36 (D) specify record keeping and reporting requirements;

37 (E) specify season;

- 1 (F) specify species;
 - 2 (G) specify size;
 - 3 (H) specify quantity;
 - 4 (I) specify disposition of resources;
 - 5 (J) specify marking requirements; and
 - 6 (K) specify harvest conditions.
- 7 (3) unless specifically stated as a condition on the permit, all statutes, rules, and proclamations shall
- 8 apply to the permittee and the permittee's designees.
- 9

10 *History Note: Authority G.S. 113-134; 113-169.1; 113-170.2; 113-170.3; 113-182; 113-210; 143B-289.52;*

11 *Temporary Adoption Eff. May 1, 2000;*

12 *Eff. April 1, 2001;*

13 *Amended Eff. April 1, 2009; September 1, 2005;*

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

15 *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) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on
18 a calendar year basis.

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

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

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

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

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

29 (d) Coastal Recreational Fishing License Exemption Permit:

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

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

36 (A) individuals with physical or mental impairment;

- 1 (B) members of the United States Armed Forces and their dependents, upon presentation of a
2 valid military identification card;
- 3 (C) individuals receiving instruction on recreational fishing techniques and conservation
4 practices from employees of state or federal marine or estuarine resource management
5 agencies or instructors affiliated with an educational institution; institution as defined in
6 15A NCAC 03I .0101(1); and
- 7 (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

8 ~~For the purpose of this Paragraph, educational institutions include high schools and other secondary~~
9 ~~educational institutions.~~

- 10 (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and
11 physical location of the organized fishing event for which the exemption is granted and the duration
12 of the permit shall not exceed one year from the date of issuance.
- 13 (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the
14 following, in addition to the information required in Rule .0501 of this Section, is submitted to the
15 Fisheries Director, in writing, at least 30 days prior to the event:
- 16 (A) the name, date, time, and physical location of the event;
- 17 (B) documentation that substantiates local, state, or federal involvement in the organized
18 fishing event, if applicable;
- 19 (C) the cost or requirements, if any, for an individual to participate in the event; and
- 20 (D) an estimate of the number of participants.

21 (e) Requirements for Dealer-dealer permits for monitoring fisheries under a quota or allocation:

- 22 (1) All species-specific permits listed in Subparagraphs (e)(2) through (e)(6) of this Rule are subject to
23 the requirements of this Paragraph. During the commercial season commercial harvest of a fishery
24 opened by proclamation or rule for the fishery for which a dealer permit for monitoring fisheries
25 under a quota or allocation shall be issued, it shall be unlawful for a fish dealer issued such permit
26 to fail to:
- 27 (A) ~~fax or send via electronic mail~~ submit by electronic means, including electronic mail, fax,
28 or text message, by noon daily, on forms provided by the Division of Marine Fisheries, daily
29 in quota monitoring logs, the previous day's landings for the permitted fishery to the
30 Division. The form shall include the dealer's name, dealer's license number, date the fish
31 were landed, permittee's or designee's signature, date the permittee or designee signed the
32 form, and species-specific information as listed in Parts (e)(2)(A), (e)(3)(A), (e)(4)(A), and
33 (e)(5)(A) of this Rule. If the dealer submits their trip tickets by electronic means, then the
34 dealer shall submit their quota monitoring logs by electronic means. If the dealer is unable
35 to submit by electronic means the required information, the permittee shall call in the
36 previous day's landings to the Division of Marine Fisheries Communications Center at 800-
37 682-2632 or 252-515-5500. Landings for Fridays or Saturdays shall be submitted no later

1 than noon on the following ~~Monday~~. ~~If the dealer is unable to fax or electronically mail the~~
2 ~~required information, the permittee shall call in the previous day's landings to the~~
3 ~~Division;Monday;~~

- 4 (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request
5 or no later than five days after the close of the ~~season~~ harvest in a commercial fishing
6 operation for the fishery permitted;
- 7 (C) maintain ~~faxes and other~~ related documentation in accordance with 15A NCAC 03I .0114;
- 8 (D) contact the Division daily, regardless of whether a transaction for the fishery for which a
9 dealer is permitted occurred; and
- 10 (E) record the permanent dealer identification number on the bill of lading or receipt for each
11 transaction or shipment from the permitted fishery.

12 (2) Atlantic Ocean Flounder Dealer Permit:

- 13 (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the
14 previous day's landings of Atlantic Ocean flounder shall include the permit number,
15 number of vessels used for harvest, and ~~the~~ pounds harvested.
- 16 (B) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land
17 Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single
18 transaction at their licensed location during the open season without first obtaining an
19 Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the
20 Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- 21 (C) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100
22 pounds of flounder from a single transaction from the Atlantic Ocean without first
23 obtaining an Atlantic Ocean Flounder Dealer Permit.

24 (3) Black Sea Bass North of Cape Hatteras Dealer Permit:

- 25 (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the
26 previous day's landings of black sea bass north of Cape Hatteras shall include the permit
27 number, number of vessels used for harvest, and ~~the~~ pounds harvested.
- 28 (B) It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of black
29 sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day
30 per commercial fishing operation during the open season unless the dealer has a Black Sea
31 Bass North of Cape Hatteras Dealer Permit.

32 (4) Estuarine Flounder Dealer Permit:

- 33 (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the
34 previous day's landings of estuarine flounder shall include the permit number, number of
35 vessels used for harvest, pounds harvested, gear category, and management area.

1 (B) It shall be unlawful for a fish dealer to possess, purchase, sell, or offer for sale flounder
2 taken from estuarine waters without first obtaining an Estuarine Flounder Dealer Permit
3 required for specific management purposes for the applicable fisheries and harvest area.

4 ~~(4)~~(5) Spiny Dogfish Dealer Permit:

5 (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the
6 previous day's landings of spiny dogfish shall include the permit number, number of vessels
7 used for harvest, and ~~the~~ pounds harvested.

8 (B) It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny
9 dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish
10 Dealer Permit.

11 ~~(5)~~(6) Striped Bass Dealer Permit:

12 (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the
13 previous day's landings of striped bass shall include the permit number, number of tags
14 used by area, pounds harvested by area, and for the Atlantic Ocean, type of gear used for
15 harvest.

16 (B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken
17 from the following areas without first obtaining a Striped Bass Dealer Permit validated for
18 the applicable harvest area:

19 (i) the Atlantic Ocean;

20 (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201;
21 or

22 (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area
23 as designated in 15A NCAC 03R .0201.

24 (C) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest
25 areas opened by proclamation without having a valid ~~Division of Marine Fisheries issued~~
26 Division-issued tag for the applicable area affixed through the mouth and gill cover or, in
27 the case of striped bass imported from other states, a similar tag that is issued for striped
28 bass in the state of origin. Division striped bass tags shall not be bought, sold, offered for
29 sale, or transferred. Tags shall be obtained ~~at from the Division offices.~~Division. Division
30 office locations that provide tags can be found on the Division's website at
31 <https://www.deq.nc.gov/striped-bass-commercial-harvest-tags>. The Division shall specify
32 the quantity of tags to be issued based on historical striped bass landings. It shall be
33 unlawful for the permittee to fail to surrender unused tags to the Division upon request.

34 ~~(f) Horseshoe Crab Biomedical Use Permit:~~

35 (1) ~~It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.~~

36 (2) ~~It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to~~
37 ~~fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,~~

1 due on February 1 of each year. Such reports shall be filed on forms provided by the Division and
2 shall include a monthly account of the number of crabs harvested, a statement of percent mortality
3 up to the point of release, the harvest method, the number or percent of males and females, and the
4 disposition of bled crabs prior to release.

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

13 (f) Estuarine Gill Net Permit:

- 14 (1) It shall be unlawful for an individual to deploy gill nets in Internal Waters, except for runaround,
15 strike, drop, or drift gill nets, without possessing a valid Estuarine Gill Net Permit issued by the
16 Division.
- 17 (2) Estuarine Gill Net Permits shall be issued or renewed by the Division on a calendar year basis. For
18 renewals, any changes in information or supporting documents shall be provided by the permit
19 holder at the time of renewal.
- 20 (3) It shall be unlawful for a permit holder:
- 21 (A) to violate the provisions of any rules or proclamations regarding the conditions set out in
22 the federally issued Endangered Species Act 16 U.S.C. 1539(a)(1)(B) Incidental Take
23 Permits, for the estuarine non-exempt gill net fisheries;
- 24 (B) to refuse or deny Division employees a trip aboard the vessel the permit holder is using or
25 observation from a Division vessel to obtain data or samples in accordance with 15A
26 NCAC 03I .0113;
- 27 (C) and the master and crew members of the boat, to interfere with or obstruct Division
28 employees in the course of obtaining data or samples, which shall include refusal or failure
29 to provide information on fishing gear parameters or to relinquish any captured sturgeon
30 or sea turtle to Division employees;
- 31 (D) to avoid or mislead Division employees by providing incorrect information on fishing
32 activity;
- 33 (E) to fail to provide a valid phone number at which the EGNP holder can be reached, return
34 phone calls, or answer text messages from the Division, or fail to notify the Division of a
35 phone number change within 14 calendar days of such change;
- 36 (F) to fail to comply with all observer notification system or call-in requirements set out by
37 permit conditions, proclamations, or rules; and

1 (G) to fail to report to the Division any incidental take of sea turtle or sturgeon within 24 hours.

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

- 3 (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday
4 without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- 5 (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls
6 from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- 7 (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph (g)(1) of
8 this Rule to:
- 9 (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with
10 trawls;
- 11 (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in
12 Internal Coastal Waters;
- 13 (C) possess more than one gallon of dead shrimp (heads on) per trip;
- 14 (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait
15 tanks, with aerators or circulating water, with a minimum combined tank capacity of 50
16 gallons; or
- 17 (E) fail to call or email the Division of Marine Fisheries Communications Center at ~~800-682-~~
18 ~~2632 or 252-726-7021~~ prior to each weekend use of the permit, specifying activities and
19 location. Calls shall be directed to the Division of Marine Fisheries Communications
20 Center at 800-682-2632 or 252-515-5500 and emails shall be sent to the email address
21 provided in the permit specific conditions.

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

24 (i) Scientific or Educational Activity Permit:

- 25 (1) It shall be unlawful for institutions or ~~agencies-organizations~~ seeking exemptions from license, rule,
26 proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or
27 educational purposes any marine or estuarine species without first obtaining a Scientific or
28 Educational Activity Permit.
- 29 (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and
30 possession allowances approved by the ~~Division of Marine Fisheries~~.Division.
- 31 (3) The Scientific or Educational Activity Permit shall only be issued for ~~approved~~ activities conducted
32 by or under the direction of ~~Scientific or Educational institutions~~ educational institutions,
33 nongovernmental conservation organizations, or scientific institutions as defined in 15A NCAC 03I
34 ~~.0101-.0101(1)~~ and approved by the Division.
- 35 (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to
36 fail to submit an annual report on collections and, if authorized, sales to the Division, due on
37 December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on

1 forms provided by the Division. Scientific or Educational Activity permits shall be issued on a
2 calendar year basis.

3 (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational
4 Activity Permit without:

5 (A) the required license for such sale;

6 (B) an authorization stated on the permit for such sale; and

7 (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish
8 dealer.

9 (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific
10 or Educational Activity Permit at the time of application.

11 (7) The permittee or designees utilizing the permit shall call or email the Division of Marine Fisheries
12 ~~Communications Center at 800-682-2632 or 252-726-7021~~ not later than 24 hours prior to use of
13 the permit, specifying activities and location. Calls shall be directed to the Division of Marine
14 Fisheries Communications Center at 800-682-2632 or 252-515-5500 and emails shall be sent to the
15 email address provided in the permit specific conditions.

16 (j) Shellfish Lease Restoration Permit:

17 (1) It shall be unlawful to transport shellfish cultivated on a shellfish lease or franchise to a restoration
18 site without first obtaining a Shellfish Lease Restoration Permit.

19 (2) The Shellfish Lease Restoration Permit shall only be issued for approved activities associated with
20 a shellfish lease or franchise.

21 (3) It shall be unlawful to harvest shellfish under a Shellfish Lease Restoration Permit without being
22 recorded on a trip ticket through a certified shellfish dealer as set forth in 15A NCAC 03I .0114.

23 (4) It shall be unlawful for the permittee or permit designee to fail to maintain a record of all shellfish
24 transported for restoration purposes and to fail to submit the record annually, unless otherwise
25 specified on the permit.

26 (5) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries
27 Communications Center at 800-682-2632 or 252-515-5500 not later than 24 hours prior to use of
28 the permit, specifying activities, location, and product size.

29 (k) Shellfish Relocation Permit:

30 (1) It shall be unlawful, without first obtaining a Shellfish Relocation Permit, to relocate shellfish from
31 an area designated by the Fisheries Director as a site where shellfish would otherwise be destroyed
32 due to maintenance dredging, construction, or other development activities.

33 (2) The Shellfish Relocation Permit shall be issued by the Fisheries Director only as part of a Coastal
34 Area Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 for
35 development projects based on the status of shellfish resources in the development area, availability
36 of Division employees to supervise the relocation activity, and if the Division has verified that there
37 is no other avoidance or minimization measure that can be incorporated.

1 ~~(j)~~(l) Under Dock Oyster Culture Permit:

- 2 (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without
3 first obtaining an Under Dock Oyster Culture Permit.
- 4 (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth
5 in G.S. 113-210(c).
- 6 (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct
7 answers, based on an educational package provided by the Division of Marine Fisheries pursuant to
8 G.S. 113-210(j), demonstrating the applicant's knowledge of:
- 9 (A) the application process;
- 10 (B) permit criteria;
- 11 (C) basic oyster biology and culture techniques;
- 12 (D) shellfish harvest area closures due to pollution;
- 13 (E) safe handling practices;
- 14 (F) permit conditions; and
- 15 (G) permit revocation criteria.
- 16 (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of
17 the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.
- 18

19 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*
20 *Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;*
21 *Eff. April 1, 2001;*
22 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1,*
23 *2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002;*
24 *Readopted Eff. April 1, 2019;*
25 *Amended Eff. March 24, ~~2025~~, 2025;*
26 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*
27

VII. PROPOSED MANAGEMENT OPTIONS

(+ Potential positive impact of action)

(- Potential negative impact of action)

1. *Status quo* (Do not amend rules.)

- + No lengthy rulemaking process required
- MFC rules not updated and clarified
- Does not reduce burden on regulated stakeholders
- Does not achieve efficiencies for quota monitored fisheries

2. Amend rules as proposed.

- + Updates and clarifies MFC rules, including adding four permits to permanent rule that are currently issued by proclamation, relocating from proclamation to rule the permit condition that makes it unlawful to refuse to allow DMF employees to obtain data for the conservation and management of marine and estuarine resources and public health protection, clarifying a fish dealer is required to submit a trip ticket for fish not sold consistent with N.C. law and MFC rules for commercial harvest reporting requirements, broadening the definition of "educational institution" to better align with the original purpose of two permits, repealing the Horseshoe Crab Biomedical Use Permit, and adding links to webpages in rules for supporting information that can change frequently.
- + Reduces burden on regulated stakeholders, including adding email as an additional means to satisfy call-in requirements for two permits and removing the requirement to notarize a permit application, instead requiring the initial permit general condition form to be notarized. This is a more appropriate time in the permit issuance process to verify a permittee's identity.
- + Achieves efficiencies for quota monitored fisheries by requiring any seafood dealer that reports trip tickets electronically to report quota monitoring logs electronically.
- Requires lengthy rulemaking process.

VIII. RECOMMENDATION

The DMF recommends the MFC approve Notice of Text for Rulemaking in support of the proposed rule amendments (Option 2).

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4/17/2025
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Fiscal Impact Analysis of Proposed Conforming Rule Changes for Permit Rules

Rule Amendments: 15A NCAC 03I .0101, .0114, 03O .0501-.0503

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
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252-269-9299

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

AUTHORITY

N.C. General Statutes

G.S. § 113-134.	Rules.
G.S. § 113-168.2.	Standard Commercial Fishing License.
G.S. § 113.168.3.	Retired Standard Commercial Fishing License.
G.S. § 113-169.1.	Permits for gear, equipment, and other specialized activities authorized.
G.S. § 113-169.2.	Shellfish license for North Carolina residents without a SCFL.
G.S. § 113-169.3.	Licenses for fish dealers.
G.S. § 113-170.	Exportation and importation of fish and equipment.
G.S. § 113-170.3.	Record-keeping requirements.
G.S. § 113-170.4.	Rules as to possession, transportation, and disposition of fisheries resources.
G.S. § 113-174.	Definitions.
G.S. § 113-181.	Duties and powers of Department.
G.S. § 113-182.	Regulation of fishing and fisheries.
G.S. § 113-210.	Under Dock Oyster Culture.
G.S. § 143B-289.52.	Marine Fisheries Commission - powers and duties.
15A NCAC 03H .0103	Proclamations, General
15A NCAC 03O .0502	General Permit Conditions
15A NCAC 03O .0504	Suspension and Revocation of Permits
15A NCAC 03O .0506	Special Permit Required for Specific Management Purposes

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). Division of Marine Fisheries (DMF) employees reviewed MFC rules with permit requirements and identified amendments needed for several rules. The proposed amendments to the MFC rules with permit requirements include adding four permits to permanent rule that are currently issued by proclamation. The proposed amendments also require any seafood dealer that reports trip tickets electronically to report quota monitoring logs electronically; relocate from proclamation to rule the permit condition that makes it unlawful to refuse to allow DMF employees to obtain data for the conservation and management of marine and estuarine resources and public health protection; add email as an additional means to satisfy call-in requirements for two permits; broaden the definition of "educational institution" to better align with the original purpose of two permits; add links to webpages in rules for supporting information that can change frequently; remove the requirement to notarize a permit application, instead requiring the initial permit general conditions form to be notarized; repeal the Horseshoe Crab Biomedical Use Permit; and make clarifying and conforming changes.

I. Summary

These actions would add requirements to permanent rules that are no longer variable in nature, increase efficiencies for quota monitoring, protect DMF employees and improve data collection and public health protection, reduce the burden on regulated stakeholders, clarify rules, and remove outdated or unnecessary requirements from rules. The following sub-sections provide background information about the affected permits, processes, and requirements. Proposed rule amendments and expected fiscal impacts are also discussed.

II. Rule Changes and Anticipated Fiscal Impacts

Estuarine Flounder Dealer Permit

Dealer Permits for Quota Monitoring

The Estuarine Flounder Dealer Permit, which allows licensed fish dealers to purchase flounder landed in estuarine waters from licensed fishermen, is proposed to be relocated from proclamation to 15A NCAC 03O .0503(e), making it easier for stakeholders to find the requirements for the fishery in which they participate, and is consistent with the other dealer permits issued by the DMF.

Due to the fisheries management strategy used in the estuarine flounder fishery, commercial harvest may close and reopen during one season, so the description of the commercial season is proposed to be amended in 15A NCAC 03O .0503(e)(1) to reflect that dealers do not need to report while their areas are closed to commercial harvest during the season, and in (e)(1)(B) for submitting the quota monitoring log no later than five days after the close of the commercial harvest, not the commercial "season."

The addition of the Estuarine Flounder Dealer Permit in 2022, consistent with the N.C. Southern Flounder Fishery Management Plan Amendment 3, caused a marked increase in the total number of dealers that held at least one permit for monitoring fisheries under a quota or allocation – from 59 dealers to 148 (a 151% increase). Only two biologists within the DMF are tasked with monitoring quotas from this expanded group of stakeholders. This growth in permit holders necessitates clarification of reporting requirements and expansion of reporting methods to

maximize reporting efficiency and accuracy and minimize burden on dealers and DMF employees. Reporting by "electronic means" incorporates the established N.C. Trip Ticket Software, fax, email, and text message, as well as future electronic means such as VESL; VESL will be a future web-based application that commercial seafood dealers can use to submit their trip tickets and quota monitoring logs electronically to the DMF from any computer, tablet, or smartphone.

Additional proposed amendments to 15A NCAC 03O .0503(e)(1)(A) would require licensed dealers who report their trip tickets electronically ("e-dealers") who hold any permit for quota monitored species to submit their quota monitoring logs by electronic means. This proposed amendment could save dealers and DMF employees time and resources at no additional cost to the dealers. For the 2024 license year, 67 e-dealers hold permits for at least one quota monitored species. Of these 67 e-dealers, 16 permit holders choose to report their daily quota monitoring logs by phone rather than electronic means. Each quota monitoring report call takes approximately 45 seconds, and in 2024 the estuarine flounder season was open for 38 days. Requiring the dealers that use the DMF online reporting system to report their trip tickets to report their daily quota monitoring logs could save the DMF approximately 7.6 hours of time which could be used on other tasks (45 secs per call x 16 calls per day x 38 days = 7.6 hrs). So, adding a requirement that e-dealers submit their quota monitoring logs through electronic means would only affect a small subsection of the overall group and would allot extra time for DMF employees to follow up by phone with dealers that have not submitted their quota monitoring logs, especially when commercial harvest for a quota monitored species has ended and final accounting needs to occur. Under the current rule permit holders are required to report their daily quota monitoring logs at the end of the season if they call in for daily monitoring. The proposed amendments will discontinue the option to call the Division for daily reporting but will maintain the reporting requirement to fulfill daily quota monitoring logs and is not expected to increase the reporting burden on permit holders.

Related amendments are proposed to 15A NCAC 03I .0101(5) to add a definition for "quota monitoring log" and clarify it is distinct from the definition of "trip ticket". Regarding electronic reporting and for consistency with other MFC rules, reference to "web-based utilities" is included in the proposed definition for "quota monitoring log" and is proposed to be added to the existing definitions for "logbook" and "trip ticket". Proposed amendments to 15A NCAC 03I .0114(a)(7) and (a)(8) set the same recordkeeping requirements for quota monitoring logs as for trip tickets for licensed fish dealers but apply only to dealers holding a permit for monitoring fisheries under a quota or allocation, not all dealers.

Estuarine Gill Net Permit (EGNP)

The EGNP, which allows the use of estuarine anchored gill nets (i.e., "set" nets) in internal coastal and joint fishing waters for either commercial or recreational purposes, is proposed to be relocated from proclamation to 15A NCAC 03O .0503(f), making it easier for stakeholders to find the requirements for the fishery in which they participate. (Runaround, drop, or strike and drift gill nets are exempted from this management.) Additional proposed amendments to 15A

NCAC 03O .0501(b) would clarify existing requirements for holders of an EGNP to hold a valid Recreational Commercial Gear License, Standard Commercial Fishing License, or Retired Standard Commercial Fishing License. This is not a new requirement but would be relocated from proclamation to rule to aid in the clarity of existing requirements for regulated stakeholders. Relocating the permit requirements in rule would have no impact on holders of the permit as the application process, permit conditions, and reporting requirements would not change; all DMF permits are issued at zero cost.

Relocating the EGNP in rule would continue the DMF's efforts to remain in compliance with the Incidental Take Permit (ITP). The specific permit conditions outlined in the EGNP are critical to its functionality and most conditions are not expected to vary for the duration of the 10-year ITP. Conditions for EGNP holders to be accessible to DMF employees for setting up observer trips and collecting data or samples are key to the utility of the EGNP as are conditions relating to refusing to allow DMF employees to obtain that data, which protects the safety of DMF employees (discussed further on page 5). Therefore, these types of conditions are proposed to be moved into rule. However, there may be a need to modify certain conditions in the future with the variability of the non-exempt gill net fisheries. Therefore, conditions such as specific timelines or contact information would remain in the EGNP's specific permit condition form, as they may be subject to change; seasonal openings as well as gear requirements would continue to be implemented by proclamation due to the variable nature of the conditions of the fishery.

Shellfish Lease Restoration Permit (SLRP)

The SLRP, which allows the transportation of oysters or other shellfish for restoration purposes not related to human consumption from an individual's shellfish lease or franchise to restoration sites, is proposed to be relocated from proclamation to 15A NCAC 03O .0503(j), making it easier for stakeholders to find the requirements for the fishery in which they participate. Relocating this permit to rule would also continue to enable the use of shellfish from shellfish leases and franchises for restoration purposes, which is an increasingly viable commercial option. The list of specific conditions of the permit proposed in 15A NCAC 03O .0503(j) establish the need for the SLRP [(j)(1)], the activities covered by the SLRP [(j)(2)], and the requirements of the permit holder while conducting permitted activities [(j)(3)-(j)(5)]. Because the shellfish transported for restoration projects are sold, the requirements would apply to the production of the source shellfish lease or franchise and need to be properly accounted for through the Trip Ticket program [(j)(3)]. The requirement of an annual report of shellfish transported through a SLRP would enable the Trip Ticket program to continue to verify and separate the shellfish sold for restoration from the remaining shellfish from shellfish leases and franchises sold for human consumption [(j)(4)]. The requirement of calling the DMF prior to using the permit would enable the DMF to conduct any federal or state required tracking or supervision of the transport of shellfish to a closed area [(j)(5)]. Relocating the permit requirements in rule would have no impact on holders of the permit as the application process, permit conditions, and reporting requirements would not change; all DMF permits are issued at zero cost.

Shellfish Relocation Permit (SRP)

The SRP, which allows Coastal Area Management Act (CAMA) permitted development projects to transport shellfish from an area where they would otherwise be destroyed to an approved receiving site, is proposed to be relocated from proclamation to 15A NCAC 03O .0503(k), making it easier for stakeholders to find the requirements for the fishery in which they participate. Relocating this permit to rule would allow this activity to continue to occur. The proposed list of specific conditions of the permit establishes the need for the SRP (15A NCAC 03O .0503(k)(1) and the factors that are considered prior to the issuance of the SRP [(k)(2)]. The need for the permit is consistent with recent amendments to 15A NCAC 03K .0101(a) by only allowing the transport of shellfish that would be destroyed by maintenance dredging, construction, or other development activities through the SRP [(k)(1)]. To receive an SRP, a qualifying development activity must first receive a CAMA permit for the development and must then be evaluated by the DMF to qualify as a transfer that can be properly supervised by DMF employees [(k)(2)]. This evaluation would be conducted by a Fisheries Resource Specialist in coordination with Division of Coastal Management representatives. Relocating the permit requirements in rule would have no impact on holders of the permit as the application process, permit conditions, and reporting requirements would not change; all DMF permits are issued at zero cost.

The demand for the Estuarine Flounder Dealer Permit, Estuarine Gill Net Permit, Shellfish Lease Restoration Permit, and Shellfish Relocation Permit is no longer variable. Codifying these permits into permanent rules, along with minor technical amendments, will enhance consistency and clarity, making it easier for the regulated community and DMF to access applicable requirements.

Relocating a Permit Condition from Proclamation to Rule (data collection and harassment)

(15A NCAC 03O .0502)

Amendments are proposed to 15A NCAC 03O .0502 to clarify and align the rule with recent amendments to Rule 15A NCAC 03I .0113. Both of these rules apply to all permits issued by the Fisheries Director under Chapter 113, Subchapter IV of the General Statutes (e.g., fishing). The amendments to 03I .0113 made it unlawful for persons engaged in regulated fishing activity to refuse to allow DMF employees to obtain data for the conservation of marine and estuarine resources or for the protection of public health related to public health programs that fall under the authority of the MFC (e.g., shellfish sanitation). Additional amendments provided the types of data that may be collected. The amendments support the importance of participation by persons engaged in regulated fishing activity in DMF data collection and provide a safer working environment for DMF employees. The rule amendments became effective March 24, 2025. The approved fiscal analysis for the amendments to 03I .0113 can be found [here](#): https://www.osbm.nc.gov/documents/files/DEQ_2023-04-06/open.

Amendments to 15A NCAC 03O .0502 propose relocating an existing permit condition from proclamation to rule by referencing 15A NCAC 03I .0113, which sets requirements for licensees and individuals engaged in regulated fishing activities. This approach mirrors four other MFC rules (15A NCAC 03O .0101, .0109, .0112, .0301). These changes aim to enhance consistency

across MFC rules and improve clarity for regulated stakeholders. This enhanced consistency and clarity could result in incremental improvements in compliance by the regulated community which could result in enhanced safety for DMF employees. There could be negligible time costs to persons participating in regulated fishing activity in the form of time spent interacting with DMF employees participating in the data collection processes.

Adding Email as an Additional Means to Satisfy Call-In Requirements

(15A NCAC 03O .0503)

Scientific and Educational Activity Permit (SEAP) and Weekend Trawling for Live Shrimp Permit (WTLS)

DMF proposes to add email as an additional means to satisfy reporting requirements of two permits: the SEAP, which allows for the collection of regulated fisheries resources for scientific and educational use by educational institutions, scientific institutions, and nongovernmental conservation organizations; and the WTLS, which permits and identifies fishermen taking live shrimp for bait with trawls from areas open to the harvest of shrimp with trawls from Friday 9:00 p.m. through Saturday 12:00 p.m. (noon). The specific permit conditions in existing MFC rule for both the SEAP and the WTLS require permittees to call the DMF communications center to report use of the permit and specify activities and location. Informing Marine Patrol of the activity through DMF communications can save valuable time and effort used to respond to permitted activity. Currently, calling the DMF communications center by phone is the only method listed in 15A NCAC 03O .0503(g) and (i) for satisfying the requirement to report activity for the permits. Since the SEAP and WTLS permits were established in rule, the amount of communication via email between permittees and the DMF has increased.

Adding email as a method to satisfy the requirement to report permit activity to the DMF would provide several benefits, including making it easier for regulated stakeholders to forward required information to the DMF and improving the tracking of activity of permit holders by the DMF. Currently, call in reports are processed by the communications center and then a report is provided to the Fisheries Management section which is logged by staff. An email system will provide a more direct mode of reporting and will eliminate an internal process between the communications center and Fisheries Management staff. The addition of email as a mechanism to report permit use is expected to result in small unquantifiable benefits for permit holders and DMF by making the reporting process more efficient.

Broadening the Definition of "Educational Institution"

(15A NCAC 03I .0101, 03O .0503)

Scientific and Educational Activity Permit (SEAP) and Coastal Recreational Fishing License (CRFL) Exemption Permit

Proposed amendments expand the definition of "educational institution" to add a reference to the statutorily defined phrase "public school unit" (N.C.G.S. § 115C-5(7a)), which includes charter schools and elementary through high schools, and add private schools and organizations whose mission includes education. These changes more closely align with the original purpose of the SEAP and CRFL Exemption Permit and would clarify whether these educational entities can be issued a SEAP or CRFL Exemption Permit. The SEAP allows for the collection of regulated fisheries resources for scientific and educational use by educational institutions, scientific institutions, and nongovernmental conservation organizations. The CRFL Exemption Permit allows individuals and organizations serving certain groups (e.g., individuals with physical/mental limitations, disadvantaged youth, etc.) the ability to conduct recreational fishing events without each participant obtaining a CRFL.

Minor proposed amendments to 15A NCAC 03O .0503(d)(2)(C) and (i)(3) point to the expanded definition of "educational institution" in 15A NCAC 03I .0101(1)(b). MFC Rule 15A NCAC 03I .0101(1)(b) currently defines "educational institution" but does not include broad enough language to include elementary through high schools, nor organizations whose mission includes education, many of which apply for the SEAP or CRFL Exemption Permit and would otherwise be approved. These updated definitions will align rule definitions with DMF policy.

During the SEAP application process, the applicant, the applicant's affiliation(s), and the proposed activities are reviewed by DMF employees before the permit is issued or denied. This process ensures the applicant and entity have the proper credentials to hold a SEAP and the proposed activity is evaluated before a SEAP is issued.

During the CRFL Exemption Permit application process, the purpose of the organized fishing event to be held in coastal or joint fishing waters is reviewed by DMF employees to ensure the event is consistent with the conservation objectives of the MFC. Those objectives include when individuals receive instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with educational institutions, so broadening the definition of "educational institution" in 15A NCAC 03I .0101(1)(b) further clarifies the conservation objectives of the MFC in the issuance of these permits. With the expanded definition of "educational institution", text in 15A NCAC 03O .0503(d)(2) is proposed to be deleted, as it is unnecessary.

Effective June 1, 2022, an amendment was made to 15A NCAC 03I .0101(1)(e) to add a new definition for "nongovernmental conservation organization" pursuant to Session Law 2015-241, Section 14.10A for the issuance of SEAPs. An amendment is proposed to the history note of this rule to add a reference to the authorizing law.

Adding Links to Webpages for Supporting Information

(15A NCAC 03O .0501, .0503)

As technology develops, more agencies and businesses are using websites to inform the public more quickly and feasibly. Not only are websites informative, but they allow the user to find the most up-to-date information on an easily accessible platform from any device with internet

capabilities. In an effort to provide the best customer service, a link to a webpage is proposed to be added to 15A NCAC 03O .0501(p) to guide the public to a location on the DMF website that displays which DMF offices issue particular permits, because not all DMF offices issue all types of permits. For many permits, the webpage would also provide access for the public to print their own permit applications rather than having to come into a DMF office to physically obtain one.

A link to a separate webpage is proposed to be added to 15A NCAC 03O .0503(e)(6)(C) to guide the public to a location on the DMF website that displays which DMF offices provide striped bass tags, which is a requirement for the holder of a Striped Bass Dealer Permit. A tag must be obtained from the DMF and affixed to each striped bass in order to track the fish in the markets. The rule states tags are available at DMF offices, but currently only the DMF Elizabeth City and Manteo offices issue tags. Having a webpage that displays which DMF offices issue tags would accommodate changes in DMF infrastructure over time and provide better customer service.

This inclusion of a website in the rule for permit information allows for more efficient stakeholder access to updates to permit information. The proposed amendments will improve access to permit information which is consistent with the Department of Environmental Quality's Permitting Transformation Program. This is a department-wide initiative to update and improve the permit process and provide better access to permit information, which benefits permitted entities, the public, and DMF through that clarity.

Notarizing Initial Permit General Conditions Form Instead of Permit Application

(15A NCAC 03O .0501)

Amendments are proposed to eliminate the duplicative requirement for notarization of permit applications. Amendments are proposed to 15A NCAC 03O .0501(a)(1) and (i) to make these changes and additional clarifications. Current Paragraph (m) of this rule is also proposed to occur earlier in the rule as Paragraph (j), to put in sequence related requirements.

Under the current requirements, new permit applicants are required to have their signatures notarized on multiple forms including the general conditions form plus any additional permit-specific forms. Under the proposed amendments, a new permit applicant would only be required to have their signature notarized on the general conditions form, which is required at initial issuance for any permit. The existing requirements put an unnecessary burden and cost on the regulated public without a commensurate benefit. Reducing the number of forms that require notarization will save the public time and/or notary fee costs without sacrificing the benefits associated with verifying the permittee's identity during initial permit issuance. Further, this notarized general conditions form remains on file with the DMF, and after the rule is amended, it will no longer be necessary to have additional permit forms notarized in the future.

As of the 2023-2024 license and permit season, all current permittees have a notarized general conditions form on file with the DMF. As such, they would not benefit from the proposed rule amendment; notarized signatures on annual permit renewals are already not required under the current rule.

The potential benefits of this rule change are highest in the near term for new permittees obtaining their initial permit by mail (versus in person). Under the existing rule, new permittees submit two notarized forms, at a minimum, with their initial application (one general conditions form plus at least one permit-specific form). Under the proposed rule, these permittees would be required to have just one form notarized (the general conditions form). Under this scenario, the rule change would save new permittees between \$0-\$10 (one form x \$0 to \$10 per notarization). The amount saved would vary depending on how many permits the new permittee was applying for and how much their notary of choice charges per notarization.

In product year 2025, there were 51 permit holders that did not have a history of holding a permit that applied for one. Applications for product year 2025 opened on April 15th, 2024, became effective July 1, 2024, and will expire June 30th, 2025. For the 2025 product year, new permittees submitted an average of 1.1 permit applications per new applicant. Assuming this participation rate remains steady, the proposed rule amendments could result in total annual savings for the regulated public ranging from \$0 to \$561 (51 applicants x 1.1 applications per applicant x \$10 notary fee per application). This is likely an overestimate of savings, however, as recent trends suggest declining participation rates plus the majority of permit holders apply in person. Of the 51 new permit holders, approximately three applied by mail. New permittees obtaining their initial permit in person at a DMF office would not realize a cost savings from this particular proposed rule change since DMF license agents provide notary services for free. The proposed amendments to the notary requirements for permits will not jeopardize the ability for the DMF to verify the permittee's identity.

Repealing the Horseshoe Crab Biomedical Use Permit

(15A NCAC 03O .0503)

Horseshoe Crab Biomedical Use Permit

The Horseshoe Crab Biomedical Use Permit, which allows the use of horseshoe crabs taken from North Carolina joint or coastal fishing waters for biomedical purposes, is proposed to be deleted from 15A NCAC 03O .0503(f). The [Atlantic States Marine Fisheries Commission](#) (ASMFC) manages horseshoe crab populations along the Atlantic coast, and its management plans balance allowances for bait harvesting and biomedical uses with regulations to ensure sustainability. Individual states, under the umbrella of the ASMFC's management plans, implement regulations for horseshoe crab harvesting, including daily trip limits, annual quotas, and restrictions on the use of horseshoe crabs for biomedical purposes. States can choose whether or not to allow the taking of horseshoe crabs for biomedical use through a permit. Horseshoe crab blood is used in the production of Limulus Amoebocyte Lysate (LAL) which is used for testing the safety of vaccines, injectable drugs, and medical devices. The ASMFC Interstate Fishery Management Plan for Horseshoe Crab encourages biomedical harvesters to provide the horseshoe crabs to the bait industry and count those crabs towards the bait harvest annual quota. Since its introduction in North Carolina in 2000, there has only been one Horseshoe Crab Biomedical Use Permit issued under which sale of LAL occurred. That permit has since expired, and there is no indication that interest will increase in North Carolina. As

such, this proposed action is not expected to have an impact on the industry in North Carolina. It is important to note that eliminating the permit will not disallow use of horseshoe crabs for biomedical purposes in North Carolina, but access to horseshoe crabs would be limited to the annual open commercial bait harvest season (January–May) and counted towards the annual bait quota for compliance with the Interstate Fishery Management Plan.

When an N.C. Horseshoe Crab Biomedical Use Permit was issued, it was time intensive for DMF employees to collect the information from permit holders to meet the Interstate Fishery Management Plan compliance requirements, regardless of whether LAL was sold. The only impact on DMF employees from the elimination of the permit would be to notify the ASMFC of North Carolina's change of status via its annual compliance report.

Clarifying and Conforming Rule Amendments

(15A NCAC 03I .0101)

(15A NCAC 03I .0114)

(15A NCAC 03O .0501)

Conforming Amendment

A conforming amendment is proposed to 15A NCAC 03I .0114(a)(1) to clarify a fish dealer is required to submit a trip ticket for fish not sold, consistent with "transaction" in N.C.G.S. § 113-168.2 and requirements of N.C.G.S. § 113-170.3 and 15A NCAC 03I .0123 for commercial harvest reporting requirements. This clarification is being proposed while the recordkeeping requirements rule is being amended for permit-related needs (see Dealer Permits for Quota Monitoring).

Definition of "Permittee"

A new definition of "permittee" is proposed in 15A NCAC 03I .0101(5)(l) to address the ubiquitous use of "permittee" and "permit holder" throughout MFC rules. In numerous MFC rules, including rules proposed in this analysis, there is a mix of the usage of "permit holder" and "permittee". Rule 15A NCAC 03I .0101(5)(b) defines "designee" as 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. Rule 15A NCAC 03I .0101(5)(e) defines "holder" as a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment. However, there is no definition for "permittee".

The definition of "permittee" mimics the definition of "licensee", except that the definition of "permittee" is not limited to persons who hold a "valid" permit. A "permittee" can include a person who holds a "valid" permit and, in some instances, a person who no longer holds a permit. This is consistent with how the rule is already implemented in that certain permit conditions continue to be enforceable even after a permit is no longer "valid." For example, a person has 30 days to remove gear associated with the permit after revocation or expiration of a

permit. In this scenario, the person is still considered a “permittee” for purposes of enforcing the conditions of the expired permit.

Minor Grammatical Amendments

Two minor grammatical amendments are proposed to 15A NCAC 03O .0501(d) and (e) for consistency throughout MFC rules. The current text reads "a permittee and his designees" and the proposed text reads " a permittee and a permittee's designees". These amendments will make the usage of pronouns in this rule consistent with other MFC rules. There are no impacts associated with these changes other than from improved rule clarity.

1 **Appendix: Proposed Rules**

2
3 15A NCAC 03I .0101 is proposed for amendment as follows:

4
5 **SUBCHAPTER 03I – GENERAL RULES**

6
7 **SECTION .0100 – GENERAL RULES**

8
9 **15A NCAC 03I .0101 DEFINITIONS**

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

11 (1) enforcement and management terms:

12 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial
13 fishing operations.

14 (b) "Educational institution" means a college, university, or community college accredited by
15 an accrediting agency recognized by the U.S. Department of Education; an Environmental
16 Education Center certified by the N.C. Department of Environmental Quality Office of
17 Environmental Education and Public Affairs; ~~or~~ a zoo or aquarium certified by the
18 Association of Zoos and ~~Aquariums~~ Aquariums; or a public school unit, private school, or
19 an organization whose mission includes education.

20 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except
21 the Atlantic Ocean.

22 (d) length of finfish:

23 (i) "Curved fork length" means a length determined by measuring along a line tracing
24 the contour of the body from the tip of the upper jaw to the middle of the fork in
25 the caudal (tail) fin.

26 (ii) "Fork length" means a length determined by measuring along a straight line the
27 distance from the tip of the snout with the mouth closed to the middle of the fork
28 in the caudal (tail) fin, except that fork length for billfish is measured from the tip
29 of the lower jaw to the middle of the fork of the caudal (tail) fin.

30 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal
31 insertion of the pectoral fin to the fork of the tail measured along the contour of
32 the body in a line that runs along the top of the pectoral fin and the top of the
33 caudal keel.

34 (iv) "Total length" means a length determined by measuring along a straight line the
35 distance from the tip of the snout with the mouth closed to the tip of the
36 compressed caudal (tail) fin.

- 1 (e) "Nongovernmental conservation organization" means an organization whose primary
2 mission is the conservation of natural resources. For the purpose of this Chapter, a
3 determination of the organization's primary mission is based upon the Division of Marine
4 Fisheries' consideration of the organization's publicly stated purpose and activities.
- 5 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
6 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
7 or deleterious substances, or marine biotoxins that render the consumption of
8 shellfish from those growing waters hazardous. This includes poisonous or
9 deleterious substances as listed in the latest approved edition of the National
10 Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan
11 Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action
12 Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances
13 in Seafood, which is incorporated by reference, including subsequent amendments
14 and editions. A copy of the reference material can be found at
15 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-
17 sanitation-program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-
16 sanitation-program-nssp), at no cost;
18 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
19 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
20 outfall that may contaminate shellfish and cause a food safety hazard as defined
21 in 15A NCAC 18A .0301;
22 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
23 18A .0901 to be in or adjacent to a marina;
24 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
25 18A .0901 to be impacted by other potential sources of pollution that render the
26 consumption of shellfish from those growing waters hazardous, such as a
27 wastewater treatment facility that does not contaminate a shellfish area when it is
28 operating normally but will contaminate a shellfish area and shellfish in that area
29 when a malfunction occurs; or
30 (v) where the Division is unable to complete the monitoring necessary to determine
31 the presence of contamination or potential pollution sources.
- 32 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
33 area, means, and methods where take or possession is for a recreational purpose.
- 34 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
35 purpose.
- 36 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
37 the Fisheries Director through proclamation authority.
- (j) "Scientific institution" means one of the following entities:

- 1 (i) an educational institution as defined in this Item;
- 2 (ii) a state or federal agency charged with the management of marine or estuarine
- 3 resources; or
- 4 (iii) a professional organization or secondary school working under the direction of,
- 5 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
- 6 of this Item.
- 7 (2) fishing activities:
- 8 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
- 9 marine or estuarine resources, or other non-native species that may thrive if introduced into
- 10 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
- 11 rearing on private bottom (with or without the superadjacent water column) or in a
- 12 controlled environment. A controlled environment provides and maintains throughout the
- 13 rearing process one or more of the following:
- 14 (i) food;
- 15 (ii) predator protection;
- 16 (iii) salinity;
- 17 (iv) temperature controls; or
- 18 (v) water circulation, utilizing technology not found in the natural environment.
- 19 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
- 20 to work the gear and be within 100 yards of any gear in use by that person at all times.
- 21 Attended does not include being in a building or structure.
- 22 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
- 23 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
- 24 controlled environment. A controlled environment provides and maintains throughout the
- 25 shedding process one or more of the following:
- 26 (i) food;
- 27 (ii) predator protection;
- 28 (iii) salinity;
- 29 (iv) temperature controls; or
- 30 (v) water circulation, utilizing technology not found in the natural environment. A
- 31 shedding operation does not include transporting pink or red-line peeler crabs to
- 32 a permitted shedding operation.
- 33 (d) "Depurate" or "deputation" has the same meaning as defined in the 2019 revision of the
- 34 NSSP Guide for the Control of Molluscan Shellfish, Section I: Purpose and Definitions.
- 35 This definition is incorporated by reference, not including subsequent amendments and
- 36 editions. A copy of the reference material can be found at

1 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
2 [program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost.

- 3 (e) "Long haul operation" means fishing a seine towed between two vessels.
4 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
5 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
6 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
7 not.
8 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
9 as defined in G.S. 113-168.
10 (i) "Swipe net operations" means fishing a seine towed by one vessel.
11 (j) "Transport" means to ship, carry, or cause to be carried or moved by public or private
12 carrier by land, sea, or air.
13 (k) "Use" means to employ, set, operate, or permit to be operated or employed.

14 (3) gear:

- 15 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed
16 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch
17 is dipped or bailed.
18 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom
19 at both ends or with one end anchored or attached to the bottom and the other end attached
20 to a vessel.
21 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal
22 Fishing Waters except:
23 (i) cast nets;
24 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension
25 no larger than 18 inches and that by design is collapsed at all times when in the
26 water, except when it is being retrieved from or lowered to the bottom;
27 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop
28 or frame to which the net is attached not exceeding 60 inches along the perimeter;
29 (iv) gigs or other pointed implements that are propelled by hand, whether or not the
30 implement remains in the hand;
31 (v) hand operated rakes no more than 12 inches wide and weighing no more than six
32 pounds and hand operated tongs;
33 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-
34 bait trotline;
35 (vii) landing nets used to assist in taking fish when the initial and primary method of
36 taking is by the use of hook and line;
37 (viii) minnow traps when no more than two are in use;

- 1 (ix) seines less than 30 feet in length;
- 2 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by
- 3 mechanical means, including elastic tubing or bands, pressurized gas, or similar
- 4 means.
- 5 (d) "Corkline" means the support structure a net is attached to that is nearest to the water
- 6 surface when in use. Corkline length is measured from the outer most mesh knot at one end
- 7 of the corkline following along the line to the outer most mesh knot at the opposite end of
- 8 the corkline.
- 9 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth
- 10 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 11 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure
- 12 attached to the bottom, at both ends of the net.
- 13 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or
- 14 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one
- 15 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,
- 16 through which fish enter the enclosure. The portion of the net designed to hold or trap fish
- 17 is completely enclosed in mesh or webbing, except for the openings for fish passage into
- 18 or out of the net (funnel area).
- 19 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills
- 20 in its mesh as a result of net design, construction, mesh length, webbing diameter, or
- 21 method in which it is used.
- 22 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest
- 23 to the water surface when in use. Headrope length is measured from the outer most mesh
- 24 knot at one end of the headrope following along the line to the outer most mesh knot at the
- 25 opposite end of the headrope.
- 26 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or
- 27 frames. The net has one or more internal funnel-shaped openings with tapered ends directed
- 28 inward from the mouth, through which fish enter the enclosure. The portion of the net
- 29 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the
- 30 openings for fish passage into or out of the net (funnel area).
- 31 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,
- 32 wire, or similar material set vertically in the water and held in place by stakes or anchors
- 33 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead
- 34 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 35 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,
- 36 and other rakes when towed by engine power, patent tongs, kicking with propellers or

- 1 deflector plates with or without trawls, and any other method that utilizes mechanical
2 means to harvest clams.
- 3 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other
4 rakes when towed by engine power, and any other method that utilizes mechanical means
5 to harvest oysters.
- 6 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite
7 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- 8 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead
9 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and
10 lead(s) are not conical, nor are they supported by hoops or frames.
- 11 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use
12 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 13 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish
14 by encirclement and confining fish within itself or against another net, the shore or bank
15 as a result of net design, construction, mesh length, webbing diameter, or method in which
16 it is used.
- 17 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations
18 of fish species throughout their entire life cycle, including early growth and development, as well
19 as forage species utilized in the food chain. Fish habitats in all Coastal Fishing Waters, as determined
20 through marine and estuarine survey sampling, are:
- 21 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems
22 utilized by post-larval and later juvenile anadromous fish.
- 23 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of
24 anadromous fish has been documented in Division sampling records through direct
25 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 26 (c) "Coral" means:
- 27 (i) fire corals and hydrocorals (Class Hydrozoa);
28 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
29 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which
30 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),
31 and sea pansies (*Renilla* sp.).
- 32 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and
33 live oysters of varying density.
- 34 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard
35 substrate, excluding mollusk shells, but including dead coral or rock. Living marine
36 organisms associated with hard bottoms, banks, reefs, and live rock include:
- 37 (i) Coralline algae (Division Rhodophyta);

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

1 of above-ground leaves, below-ground rhizomes, or reproductive structures
2 associated with one or more SAV species and include the sediment within these
3 areas; or

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

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

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

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

- 1 (iii) for recreational fishing operations, when fish are retained in possession by the
2 fisherman.
- 3 (g) "Licensee" means any person holding a valid license from the ~~Department~~ Division to take
4 or deal in ~~marine fisheries resources, resources governed by any provision of Subchapter~~
5 113 of the North Carolina General Statutes under the authority of the Marine Fisheries
6 Commission or any rule adopted by the Marine Fisheries Commission pursuant to
7 Subchapter 113, except as otherwise defined in 15A NCAC 03O .0109.
- 8 (h) "Logbook" means paper forms provided by the Division and electronic data files generated
9 from software or web-based utilities provided by the Division for the reporting of fisheries
10 statistics by persons engaged in commercial or recreational fishing or for-hire operators.
- 11 (i) "Master" means captain or operator of a vessel or one who commands and has control,
12 authority, or power over a vessel.
- 13 (j) "New fish dealer" means any fish dealer ~~making application~~ applying for a fish dealer
14 license who did not possess a valid dealer license for the previous license year in that name.
15 For purposes of license issuance, adding new categories to an existing fish dealers license
16 does not constitute a new dealer.
- 17 (k) "Office of the Division" means physical locations of the Division conducting license and
18 permit transactions in Wilmington, Morehead City, Washington, and Roanoke Island,
19 North Carolina. Other businesses or entities designated by the Secretary to issue
20 Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not
21 considered Offices of the Division.
- 22 (l) "Permittee" means any person who has been issued a permit from the Division to take or
23 deal in resources governed by any provision of Subchapter 113 of the North Carolina
24 General Statutes under the authority of the Marine Fisheries Commission or any rule
25 adopted by the Marine Fisheries Commission pursuant to Subchapter 113.
- 26 (m) "Quota monitoring log" means paper forms provided by the Division and electronic data
27 files generated from software or web-based utilities provided by the Division for the
28 reporting of fisheries statistics by licensed fish dealers who hold dealer permits for
29 monitoring fisheries under a quota or allocation.
- 30 ~~(n)~~ (n) "Responsible party" means the person who coordinates, supervises, or otherwise directs
31 operations of a business entity, such as a corporate officer or executive level supervisor of
32 business operations, and the person responsible for use of the issued license in compliance
33 with applicable statutes and rules.
- 34 ~~(o)~~ (o) "Tournament organizer" means the person who coordinates, supervises, or otherwise
35 directs a recreational fishing tournament and is the holder of the Recreational Fishing
36 Tournament License.

1 15A NCAC 03I .0114 is proposed for amendment as follows:

2

3 **15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS**

4 (a) It shall be unlawful for a licensed fish dealer:

5 (1) to record false information on the North Carolina trip ticket or to fail to legibly record all items on
6 the North Carolina trip ticket for each ~~transaction~~transaction, including for fish harvested but not
7 sold pursuant to 15A NCAC 03I .0123, and submit the trip ticket in accordance with G.S. 113-168.2,
8 including the following:

9 (A) fisherman's name;

10 (B) fisherman's North Carolina license number;

11 (C) dealer's North Carolina license number;

12 (D) start date of trip, including year, month, and day;

13 (E) unload date of trip, including year, month, and day;

14 (F) North Carolina Division of Marine Fisheries Vessel Identification Number or indicate if
15 no vessel was used;

16 (G) crew size;

17 (H) gear fished;

18 (I) waterbody fished;

19 (J) species landed;

20 (K) quantity of each species landed in pounds, numbers of fish, bushels, or other units of
21 measurement;

22 (L) disposition of species;

23 (M) transaction number;

24 (N) number of crab pots or peeler pots fished, if applicable;

25 (O) state where species was taken if other than North Carolina;

26 (P) lease number, if applicable;

27 (Q) bottom type, if applicable; and

28 (R) shellfish harvest area, if applicable.

29 (2) to fail to provide to the Division a Trip Ticket Submittal/Transaction form indicating the number of
30 transactions that occurred during the previous month;

31 (3) to fail to make paper copies or electronic copies of trip tickets or N.C. Trip Ticket Program Dock
32 Tickets available at the dealer location for inspection by Marine Fisheries inspectors;

33 (4) to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual
34 average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers
35 subject to the electronic reporting requirement shall be notified by the Division via certified mail
36 and within 120 days of receipt shall:

37 (A) initiate electronic file transfer of trip tickets; and

- 1 (B) continue to report by electronic file transfer until the dealer no longer holds a fish dealer
2 license with finfish or consolidated categories;
- 3 (5) to fail to use software or web-based utilities authorized by the Division when reporting
4 electronically; and
- 5 (6) to fail to keep all trip tickets and all supporting documentation for each transaction including
6 receipts, checks, bills of lading, records, electronic files, and accounts for a period of not less than
7 ~~three years-years; and~~
- 8 (7) to fail to submit quota monitoring logs in accordance with 15A NCAC 03O .0503 if the licensed
9 fish dealer holds a dealer permit for monitoring fisheries under a quota or allocation; and
- 10 (8) to fail to keep all quota monitoring logs including electronic files for a period of not less than three
11 years.

12 (b) It shall be unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer,
13 at the time of transaction, the following:

- 14 (1) a current and valid license or permit to sell the type of fish being offered and if a vessel is used, the
15 Commercial Fishing Vessel Registration; and
- 16 (2) complete and accurate information on harvest method and area of catch and other information
17 required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

18 (c) It shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of
19 lading, or other shipping documentation provided by the shipping dealer showing the following items:

- 20 (1) name of the consignee;
- 21 (2) name of the shipper;
- 22 (3) date of the shipment;
- 23 (4) name of fish being shipped; and
- 24 (5) quantity of each fish being shipped.

25 In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping
26 records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers
27 are exempt from this Paragraph.

28 (d) It shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina
29 licensed fish dealer completing all the recordkeeping requirements in G.S. 113-168.2(i).

30 (e) It shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for
31 inspection by Marine Fisheries inspectors or other agents of the Fisheries Director written documentation of purchase
32 showing the following items:

- 33 (1) name of the licensed fish dealer;
- 34 (2) name of the purchaser;
- 35 (3) date of the purchase;
- 36 (4) name of fish purchased; and
- 37 (5) quantity of each fish purchased.

1 (f) It shall be unlawful for a holder of a Fish Dealer License to have fish in possession at a licensed location without
2 written documentation from a licensed fish dealer or a completed North Carolina trip ticket to show the quantity and
3 origin of all fish.

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History Note: Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 113-182; 143B-289.52; Eff. March 1, 1994; Recodified from 15A NCAC 3I .0014 Eff. December 17, 1996; Temporary Amendment Eff. July 1, 1999; Amended Eff. June 1, 2013; August 1, 2000; Readopted Eff. March 15, ~~2023~~, 2023; Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

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; contact;~~
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 for violation of any provision of Subchapter 113 of the North Carolina General
19 Statutes under the authority of the Marine Fisheries Commission or any rule adopted by the Marine
20 Fisheries Commission pursuant to Subchapter 113 during the previous three years; and
21 (5) for permit applications from business entities:
22 (A) the business name;
23 (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC
24 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
25 (C) the name, address, and phone number of responsible party and other identifying
26 information required by this Subchapter or rules related to a specific permit;
27 (D) for a corporation applying for a permit in a corporate name, the current articles of
28 incorporation and a current list of corporate officers;
29 (E) for a partnership that is established by a written partnership agreement, a current copy of
30 such agreement shall be provided when applying for a permit; and
31 (F) for business entities other than corporations, copies of current assumed name statements if
32 filed with the Register of Deeds office for the corresponding county and copies of current
33 business privilege tax certificates, if applicable.

34 (b) A permittee shall hold a valid:

- 35 (1) Recreational Commercial Gear License, Standard Commercial Fishing License, or Retired Standard
36 Commercial Fishing License to hold an Estuarine Gill Net Permit.
37 ~~(+)(2)~~ Standard or Retired Standard Commercial Fishing License ~~in order~~ to hold:

- 1 (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
2 (B) a Permit for Weekend Trawling for Live Shrimp; or
3 (C) a Pound Net Set Permit.

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

6 ~~(2)~~(3) Fish Dealer License in the proper category ~~in order~~ to hold dealer permits for monitoring fisheries
7 under a quota or allocation for that category.

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

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

- 13 (1) Depuration Permit;
14 (2) Permit to Transplant Oysters from Seed Oyster Management Areas; or
15 (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as
16 provided in G.S. 113-169.2.

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

- 20 (1) Depuration Permit; or
21 (2) Permit to Transplant Oysters from Seed Oyster Management Areas.

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 within two business days to the applicant
6 with the deficiency in the 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 and .0505,
9 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules .0502 and .0503 of this Section, as applicable to the
10 requested permit. The permittee's signature on the initial permit general conditions form shall be notarized. In the case
11 of a person holding more than one permit, the permittee's signature on the permit general conditions form shall be
12 notarized for the initial permit issued but shall not be required for subsequent permits.

13 (j) For permit renewals, the permittee's signature on the specific condition form shall certify all information is true
14 and accurate. Notarized signatures on renewal permits shall not be required.

15 ~~(k)~~(k) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall
16 evaluate the following factors:

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

19 (2) whether the permit application meets the requirements for the permit; and

20 (3) whether the applicant has a history of eight or more violations of any provision of Subchapter 113
21 of the North Carolina General Statutes under the authority of the Marine Fisheries Commission or
22 any rule adopted by the Marine Fisheries Commission pursuant to Subchapter 113 within 10 years.

23 ~~(l)~~(l) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit
24 application and the reasons therefor. The applicant may submit further information or reasons why the permit
25 application should not be denied or modified.

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

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

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

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

1 (p) Permit applications shall be available at ~~all the Division of Marine Fisheries offices.~~ Fisheries; a list of permits
2 and the location where each permit application is available is on the Division's website at <https://deq.nc.gov/dmf->
3 permit-info.

4
5 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*
6 *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*
7 *Eff. April 1, 2001;*
8 *Temporary Amendment Eff. October 1, 2001;*
9 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,*
10 *2007; September 1, 2005; April 1, 2003; August 1, 2002;*
11 *Readopted Eff. April 1, 2019;*
12 *Amended Eff. March 24, ~~2025~~, 2025;*
13 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

14

1 15A NCAC 03O .0502 is proposed for amendment as follows:

2
3 **15A NCAC 03O .0502 GENERAL PERMIT CONDITIONS**

4 (a) It shall be unlawful to violate any permit condition.

5 (b) The following conditions shall apply to all permits issued by the Fisheries Director:

6 (1) it shall be unlawful to:

7 (A) operate under the permit except in areas, at times, and under conditions specified on the
8 permit.

9 (B) operate under a permit without having the permit or copy thereof in possession of the
10 permittee or the permittee's designees at all times of operation and the permit or copy
11 thereof shall be ready at hand for inspection, except for a Pound Net Set Permit.

12 (C) operate under a permit without having a current picture identification in possession and
13 ready at hand for inspection.

14 (D) refuse to allow inspection and sampling of a permitted activity by an agent of the Division
15 of Marine Fisheries.

16 (E) fail to provide complete and accurate information requested by the Division in connection
17 with the permitted activity.

18 (F) provide false information in the application for initial issuance, renewal, or transfer of a
19 permit.

20 (G) hold a permit issued by the Fisheries Director if not eligible to hold any license required as
21 a condition for that permit as stated in Rule .0501 of this Section.

22 (H) fail to provide reports within the timeframe required by the specific permit conditions.

23 (I) fail to keep such records and accounts as required by the rules in this Chapter for
24 determination of conservation policy, equitable and efficient administration and
25 enforcement, or promotion of commercial or recreational fisheries.

26 (J) assign or transfer permits issued by the Fisheries Director, except for a Pound Net Set
27 Permit as authorized by 15A NCAC 03J .0504.

28 (K) fail to participate in and provide accurate information for data collection in accordance
29 with 15A NCAC 03I .0113 and for survey programs administered by the Division.

30 (2) the Fisheries Director or the Fisheries Director's agent may, by conditions of the permit, impose on
31 a commercial fishing operation and for recreational purposes any of the following restrictions for
32 the permitted purposes:

33 (A) specify time;

34 (B) specify area;

35 (C) specify means and methods;

36 (D) specify record keeping and reporting requirements;

37 (E) specify season;

- 1 (F) specify species;
2 (G) specify size;
3 (H) specify quantity;
4 (I) specify disposition of resources;
5 (J) specify marking requirements; and
6 (K) specify harvest conditions.
7 (3) unless specifically stated as a condition on the permit, all statutes, rules, and proclamations shall
8 apply to the permittee and the permittee's designees.
9

10 *History Note: Authority G.S. 113-134; 113-169.1; 113-170.2; 113-170.3; 113-182; 113-210; 143B-289.52;*
11 *Temporary Adoption Eff. May 1, 2000;*
12 *Eff. April 1, 2001;*
13 *Amended Eff. April 1, 2009; September 1, 2005;*
14 *Readopted Eff. March 15, ~~2023~~, 2023;*
15 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

15A NCAC 030 .0503 is proposed for amendment as follows:

15A NCAC 030 .0503 PERMIT CONDITIONS; SPECIFIC

(a) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It shall be unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director;
 - (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine resources taken pursuant to an Aquaculture Collection Permit; or
 - (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year on the form provided by the Division of Marine Fisheries, stating the amount and disposition of marine and estuarine resources collected under authority of an Aquaculture Collection Permit.
- (3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on a calendar year basis.
- (4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to an Aquaculture Collection Permit at the time of application.

(b) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
- (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired Standard Commercial Fishing licenses, or assignments.

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

(d) Coastal Recreational Fishing License Exemption Permit:

- (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental impairment;

- (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card;
- (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies or instructors affiliated with an educational institution; institution as defined in 15A NCAC 03I .0101(1); and
- (D) disadvantaged youths as set forth in 42 U.S. Code 12511.

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

- (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and physical location of the organized fishing event for which the exemption is granted and the duration of the permit shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the following, in addition to the information required in Rule .0501 of this Section, is submitted to the Fisheries Director, in writing, at least 30 days prior to the event:
 - (A) the name, date, time, and physical location of the event;
 - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
 - (C) the cost or requirements, if any, for an individual to participate in the event; and
 - (D) an estimate of the number of participants.

(e) Requirements for Dealer-dealer permits for monitoring fisheries under a quota or allocation:

- (1) All species-specific permits listed in Subparagraphs (e)(2) through (e)(6) of this Rule are subject to the requirements of this Paragraph. During the commercial season commercial harvest of a fishery opened by proclamation or rule for the fishery for which a dealer permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a fish dealer issued such permit to fail to:
 - (A) fax or send via electronic mail submit by electronic means, including electronic mail, fax, or text message, by noon daily, on forms provided by the Division of Marine Fisheries, daily in quota monitoring logs, the previous day's landings for the permitted fishery to the Division. The form shall include the dealer's name, dealer's license number, date the fish were landed, permittee's or designee's signature, date the permittee or designee signed the form, and species-specific information as listed in Parts (e)(2)(A), (e)(3)(A), (e)(4)(A), and (e)(5)(A) of this Rule. If the dealer submits their trip tickets by electronic means, then the dealer shall submit their quota monitoring logs by electronic means. If the dealer is unable to submit by electronic means the required information, the permittee shall call in the previous day's landings to the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-515-5500. Landings for Fridays or Saturdays shall be submitted no later

~~than noon~~ on the following ~~Monday~~. ~~If the dealer is unable to fax or electronically mail the required information, the permittee shall call in the previous day's landings to the Division;~~Monday;

- (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request or no later than five days after the close of the ~~season~~ harvest in a commercial fishing operation for the fishery permitted;
 - (C) maintain ~~faxes and other~~ related documentation in accordance with 15A NCAC 03I .0114;
 - (D) contact the Division daily, regardless of whether a transaction for the fishery for which a dealer is permitted occurred; and
 - (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Atlantic Ocean Flounder Dealer Permit:
- (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of Atlantic Ocean flounder shall include the permit number, number of vessels used for harvest, and ~~the~~ pounds harvested.
 - (B) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (C) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (3) Black Sea Bass North of Cape Hatteras Dealer Permit:
- (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of black sea bass north of Cape Hatteras shall include the permit number, number of vessels used for harvest, and ~~the~~ pounds harvested.
 - (B) It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (4) Estuarine Flounder Dealer Permit:
- (A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of estuarine flounder shall include the permit number, number of vessels used for harvest, pounds harvested, gear category, and management area.

(B) It shall be unlawful for a fish dealer to possess, purchase, sell, or offer for sale flounder taken from estuarine waters without first obtaining an Estuarine Flounder Dealer Permit required for specific management purposes for the applicable fisheries and harvest area.

~~(4)~~(5) Spiny Dogfish Dealer Permit:

(A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of spiny dogfish shall include the permit number, number of vessels used for harvest, and ~~the~~ pounds harvested.

(B) It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.

~~(5)~~(6) Striped Bass Dealer Permit:

(A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of striped bass shall include the permit number, number of tags used by area, pounds harvested by area, and for the Atlantic Ocean, type of gear used for harvest.

(B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:

(i) the Atlantic Ocean;

(ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201;
or

(iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.

(C) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a valid ~~Division of Marine Fisheries issued~~ Division-issued tag for the applicable area affixed through the mouth and gill cover or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained ~~at from the Division offices.~~ Division; office locations that provide tags can be found on the Division's website at <https://www.deq.nc.gov/striped-bass-commercial-harvest-tags>. The Division shall specify the quantity of tags to be issued based on historical striped bass landings. It shall be unlawful for the permittee to fail to surrender unused tags to the Division upon request.

~~(f) Horseshoe Crab Biomedical Use Permit:~~

~~(1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.~~

~~(2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,~~

due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, a statement of percent mortality up to the point of release, the harvest method, the number or percent of males and females, and the disposition of bled crabs prior to release.

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

(f) Estuarine Gill Net Permit:

- (1) It shall be unlawful for an individual to deploy gill nets in Internal Waters, except for runaround, strike, drop, or drift gill nets, without possessing a valid Estuarine Gill Net Permit issued by the Division.
- (2) Estuarine Gill Net Permits shall be issued or renewed by the Division on a calendar year basis. For renewals, any changes in information or supporting documents shall be provided by the permit holder at the time of renewal.
- (3) It shall be unlawful for a permit holder:
- (A) to violate the provisions of any rules or proclamations regarding the conditions set out in the federally issued Endangered Species Act 16 U.S.C. 1539(a)(1)(B) Incidental Take Permits, for the estuarine non-exempt gill net fisheries;
- (B) to refuse or deny Division employees a trip aboard the vessel the permit holder is using or observation from a Division vessel to obtain data or samples in accordance with 15A NCAC 03I .0113;
- (C) and the master and crew members of the boat, to interfere with or obstruct Division employees in the course of obtaining data or samples, which shall include refusal or failure to provide information on fishing gear parameters or to relinquish any captured sturgeon or sea turtle to Division employees;
- (D) to avoid or mislead Division employees by providing incorrect information on fishing activity;
- (E) to fail to provide a valid phone number at which the Estuarine Gill Net Permit holder can be reached, return phone calls, or answer text messages from the Division, or fail to notify the Division of a phone number change within 14 calendar days of such change;
- (F) to fail to comply with all observer notification system or call-in requirements set out by permit conditions, proclamations, or rules; and

(G) to fail to report to the Division any incidental take of sea turtle or sturgeon within 24 hours.

(g) Permit for Weekend Trawling for Live Shrimp:

- (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph (g)(1) of this Rule to:
 - (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;
 - (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;
 - (C) possess more than one gallon of dead shrimp (heads on) per trip;
 - (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks, with aerators or circulating water, with a minimum combined tank capacity of 50 gallons; or
 - (E) fail to call or email the Division of Marine Fisheries Communications Center at ~~800-682-2632 or 252-726-7021~~ prior to each weekend use of the permit, specifying activities and location. Calls shall be directed to the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-515-5500 and emails shall be sent to the email address provided in the permit specific conditions.

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

(i) Scientific or Educational Activity Permit:

- (1) It shall be unlawful for institutions or ~~agencies-organizations~~ seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and possession allowances approved by the ~~Division of Marine Fisheries~~.Division.
- (3) The Scientific or Educational Activity Permit shall only be issued for ~~approved~~ activities conducted by or under the direction of ~~Scientific or Educational institutions~~ educational institutions, nongovernmental conservation organizations, or scientific institutions as defined in 15A NCAC 03I ~~.0101~~.0101(1) and approved by the Division.
- (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit an annual report on collections and, if authorized, sales to the Division, due on December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on

forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.

- (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license for such sale;
 - (B) an authorization stated on the permit for such sale; and
 - (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific or Educational Activity Permit at the time of application.
- (7) The permittee or designees utilizing the permit shall call or email the Division of Marine Fisheries Communications Center at ~~800-682-2632 or 252-726-7021~~ not later than 24 hours prior to use of the permit, specifying activities and location. Calls shall be directed to the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-515-5500 and emails shall be sent to the email address provided in the permit specific conditions.

(j) Shellfish Lease Restoration Permit:

- (1) It shall be unlawful to transport shellfish cultivated on a shellfish lease or franchise to a restoration site without first obtaining a Shellfish Lease Restoration Permit.
- (2) The Shellfish Lease Restoration Permit shall only be issued for approved activities associated with a shellfish lease or franchise.
- (3) It shall be unlawful to harvest shellfish under a Shellfish Lease Restoration Permit without being recorded on a trip ticket through a certified shellfish dealer as set forth in 15A NCAC 03I .0114.
- (4) It shall be unlawful for the permittee or permit designee to fail to maintain a record of all shellfish transported for restoration purposes and to fail to submit the record annually, unless otherwise specified on the permit.
- (5) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-515-5500 no later than 24 hours prior to use of the permit, specifying activities, location, and product size.

(k) Shellfish Relocation Permit:

- (1) It shall be unlawful, without first obtaining a Shellfish Relocation Permit, to relocate shellfish from an area designated by the Fisheries Director as a site where shellfish would otherwise be destroyed due to maintenance dredging, construction, or other development activities.
- (2) The Shellfish Relocation Permit shall be issued by the Fisheries Director only as part of a Coastal Area Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 for development projects based on the status of shellfish resources in the development area, availability of Division employees to supervise the relocation activity, and if the Division has verified that there is no other avoidance or minimization measure that can be incorporated.

~~(j)~~(1) Under Dock Oyster Culture Permit:

- (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j), demonstrating the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

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; Amended Eff. March 24, ~~2025~~2025; Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).

CONFORMING RULE CHANGES FOR FRANCHISES AND SHELLFISH LEASES ISSUE PAPER

May 1, 2025

I. ISSUE

Conform N.C. Marine Fisheries Commission (MFC) rules to align with current statutory authority and N.C. Division of Marine Fisheries (DMF) procedures for franchises and shellfish leases, consistent with N.C. Session Law 2024-32, Section 5.(a), Session Law 2019-37, Section 3, and rulemaking requirements in the North Carolina Administrative Procedure Act (APA; Chapter 150B).

II. ORIGINATION

DMF and N.C. Session Law 2024-32, Section 5.(a) and Session Law 2019-37, Section 3

III. BACKGROUND

A few dozen citizens in North Carolina, and other states as well, hold a chain of deeds for submerged land claims, or claims to any part of the bed under navigable waters or any right of fishery in navigable waters. These submerged land claims originated from King's Grants prior to the United States of America, which was founded on July 4, 1776, when it declared independence from the Kingdom of Great Britain. In 1965, the N.C. General Assembly enacted Session Law 1965-957, which included the creation of N.C. General Statutes (N.C.G.S.) §§ 113-205 and 206 in Article 16. N.C.G.S. § 113-205 outlines a process by which the Secretary of the Department of Environmental Quality, then the Commissioner of Commercial Fisheries, could recognize a submerged land claim through the registration of that claim. The registration of any submerged land claims was required to be submitted by January 1, 1970. There were 39 submerged land claims that registered their chain of deeds by this deadline.

N.C.G.S. § 113-206 enabled the Secretary to recognize the submitted submerged land claims based on an oyster or other shellfish grantor as perpetual franchises. These perpetual franchises provide private and perpetual deeded rights to the shellfish present within the recognized boundary of the submerged land claim submitted following the outlined survey requirements of N.C.G.S. § 113-205. The deeds can be, and many have been, subdivided into smaller parcels retaining the private shellfishing rights. Currently there are 49 shellfish franchises. The MFC's authority over such deeded rights is limited. Of the 49 shellfish franchises, 13 franchises (equating to 68.63 acres) are located in shellfish closure areas and thus are not operational. The remaining 36 shellfish franchises are not within a shellfish closure area and could be used for private shellfish harvest/production if an Aquaculture Operation Permit (AOP) is acquired from the Division. Only nine shellfish franchise holders also hold an AOP. The nine operational franchises are owned by eight individuals and span 257.62 acres.

The N.C. General Assembly continued to show interest in developing shellfish aquaculture and oyster restoration in the state. In 1989, the N.C. General Assembly enacted Session Law 1989-423, enabling superjacent (lying over or above something else) water column amendments to shellfish leases, and Session Law 1989-958, enabling water column amendments to be added superjacent to perpetual franchises. In 2015, the N.C. General Assembly also enacted Session Law 2015-241, requiring the development of the Senator Jean Preston Oyster Sanctuary Network.

Shellfish aquaculture is the artificial propagation of shellfish stocks conducted on shellfish leases and is regulated by N.C.G.S. § 113 Article 16. Part of the administration and management of shellfish leases, as defined in Article 16 and further defined in MFC Rule, includes the commercial production requirements for a leaseholder to retain their lease. Within the commercial production requirements is the planting, or placing shellfish seed, cultch, or shell onto the lease for the purpose of growing out or collecting wild spat and growing out for harvest, and harvesting, or the commercial harvest and sale of cultured shellfish captured through the N.C. Trip Ticket system. Shellfish franchises enable the holder of the deed to conduct shellfish harvest with the same gear allowances as active shellfish bottom leases consistent with N.C.G.S. § 113-202(r). Management of active shellfish leases also includes compliance with rules and statutes concerning subjects such as proper marking of a shellfish lease and permitting of the aquaculture activities occurring on the lease.

Continuing with its interest in developing shellfish aquaculture and oyster restoration in the state, the N.C. General Assembly passed Session Law 2019-37 effective July 1, 2019. The subtitle of the law is "an act to provide further support to the shellfish aquaculture industry in North Carolina." Section 3 of the law increased production and planting requirements for shellfish leases, which originally included franchises recognized pursuant to § N.C.G.S. 113-206. Subsection 3(d) of the Act required 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. At its May 2023 business meeting, the MFC began the rulemaking process and then on May 24, 2024, voted to give final approval to adopt the amendments to conform this rule to the requirements of this law. The rule was automatically subject to legislative review during the 2025 legislative session and then became effective March 24, 2025.

Even though the increased production and planting requirements in Session Law 2019-37 originally included franchises, DMF has understood that because franchises recognized pursuant to § N.C.G.S. 113-206 are perpetual, it did not have the authority to terminate them, and thus subjecting a franchise to production requirements would have no consequence. Effective July 3, 2024, the N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of § N.C.G.S. 113-202. Even before the MFC adopted the rule amendments in May 2024, the DMF was already developing proposed clarifying amendments to affected MFC rules but needed to await the outcome of legislative review of the rules in 2025 to have the opportunity to propose additional amendments, which are described in this paper.

IV. AUTHORITY

N.C. Session Laws

S.L. 2019-37, Section 3	AN ACT TO PROVIDE FURTHER SUPPORT TO THE SHELLFISH AQUACULTURE INDUSTRY IN NORTH CAROLINA.
S.L. 2024-32, Section 5.(a)	AN ACT TO MAKE VARIOUS CHANGES TO THE AGRICULTURAL LAWS OF THIS STATE.

N.C. General Statutes

N.C.G.S. § 113-134.	Rules.
N.C.G.S. § 113-182.	Regulation of fishing and fisheries.
N.C.G.S. § 113-201.	Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
N.C.G.S. § 113-201.1.	Definitions.
N.C.G.S. § 113-202.	New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
N.C.G.S. § 113-202.1.	Water column leases for aquaculture.
N.C.G.S. § 113-202.2.	Water column leases for aquaculture for perpetual franchises.
N.C.G.S. § 113-205.	Registration of grants in navigable waters; exercise of private fishery rights.
N.C.G.S. § 113-206.	Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.
N.C.G.S. § 143B-289.52	Marine Fisheries Commission – powers and duties.
Chapter 150B	Administrative Procedure Act.

V. DISCUSSION

According to the APA, specifically N.C.G.S. § 150B-19.1(b), the 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 N.C.G.S. § 150B-19.1(a). DMF identified four MFC rules that contain requirements for franchises that are proposed for further amendment in this paper to align with current statutory authority and DMF procedures for franchises, consistent with N.C. Session Law 2024-32, Section 5.(a):

- 15A NCAC 03O .0201, Standards and Requirements for Shellfish Leases and Franchises;
- 15A NCAC 03O .0207, Shellfish Lease and Franchise Production Reports;
- 15A NCAC 03O .0208, Termination Procedures for Shellfish Leases and Franchises; and
- 15A NCAC 03O .0210, Standards and Requirements for Franchises.

Additionally, a clarifying amendment is proposed in 15A NCAC 03I .0101, Definitions, for Sub-Item (5)(e) for the definition of "holder". A summary of the proposed amendments by rule follows.

15A NCAC 03I .0101

(DEFINITIONS)

MFC Rule 15A NCAC 03I .0101(5)(e) defines "holder" as "a person who has been lawfully issued in the person's name a license, permit, franchise, lease, or assignment." Strictly speaking, a franchise is granted, not issued, so amendments are proposed to this definition to reflect this distinction as follows: "Holder means a person who has been lawfully issued in the person's name a license, permit, ~~franchise, shellfish lease, or assignment~~ assignment, or who possesses a shellfish franchise recognized pursuant to G.S. 113-206." The proposed amendments are intended to clarify occurrences of "franchise holder" throughout MFC rules. The word "shellfish" is also proposed to precede "lease" for consistency across MFC rules.

15A NCAC 03O .0201

(STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES)

Shellfish franchises recognized under N.C.G.S. § 113-206 are perpetual. DMF has understood that, because franchises are perpetual, it did not have the authority to terminate them, and thus subjecting a franchise to production requirements would have no consequence. The N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37. The MFC's authority over these private and protected deeded rights is limited to subjects such as proper marking requirements and permitting of the aquaculture activities occurring. Proposed amendments to 15A NCAC 03O .0201 include the removal of franchises from all production requirements, as they are grounds for termination of a leasehold only.

Separate from the discussion about franchises, the enacting of Session Law 2019-37 also changed the annual production requirements for active shellfish leases, effective after July 1, 2019. The newly created production requirements, therefore, apply to new leases granted after July 1, 2019 and any leases renewed after July 1, 2019. The corresponding production requirements are found in 15A NCAC 03O .0201(f) and (g). The 10-year contracts for active leases that were originally granted before July 1, 2019 and have not yet been renewed since July 1, 2019 still reflect the previous production requirements in 15A NCAC 03O .0201(d) and (e). Proposed amendments to 15A NCAC 03O .0201(d), (e), (f), and (g) further clarify the leases that are held to the production requirements of each paragraph in their respective contracts based on their granting and renewal dates.

Lastly, the amendments to this rule that became effective March 24, 2025, included changes to Paragraph (i) to clarify the requirements current shellfish lease holders must meet to be eligible for additional shellfish lease acreage and to include all shellfish lease holders by removing the five-acre minimum. The shellfish leasing process outlined in N.C.G.S. § 113-202, N.C.G.S. § 113-202.1, and N.C.G.S. § 113-202.2, establishes the Secretary of the Department of Environmental Quality as the leasing authority. N.C.G.S. § 113-202.1 and N.C.G.S. § 113-202.2 enable a water column amendment superjacent to existing or new bottom leases and to franchises, respectively. These amendments are considered legally distinct and result in an additional shellfish lease contract for the water column lease, though the water column cannot extend outside of the footprint of the bottom lease or franchise. Proposed amendments to 15A NCAC 03O .0201(a) and (i) further clarify the authority for determining eligibility and the time at which eligibility is determined. Proposed changes also clarify to whom the eligibility determination would apply and that water column amendments are considered additional acreage. Table 1 summarizes the scenarios when a person would be subject to 15A NCAC 03O .0201(i).

Table 1. Summary of scenarios for shellfish bottom leases, shellfish franchises, and water column amendments when a person would be subject to 15A NCAC 03O .0201(i).

Subject to 15A NCAC 03O .0503(i)
Current shellfish bottom lease holder applying for another shellfish bottom lease
Current shellfish bottom lease holder applying for water column amendment
Current shellfish franchise holder, who is also a shellfish bottom lease holder, applying for a water column amendment to their franchise
Current shellfish franchise holder with a water column amendment to their franchise applying for a shellfish bottom lease
Current holder of more than one shellfish franchise with at least one water column amendment to their franchise applying for an additional water column amendment to a franchise
Not subject to 15A NCAC 03O .0503(i)
Current shellfish bottom lease holder (with or without a water column amendment) who comes into possession of a shellfish franchise
Current shellfish franchise holder who does not hold a shellfish bottom lease or water column amendment applying for a water column amendment to their franchise
Current shellfish franchise holder (with or without a water column amendment) who comes into possession of an additional shellfish franchise (with or without a water column amendment)

15A NCAC 03O .0207

(SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS)

15A NCAC 03O .0208

(TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES)

As discussed for 15A NCAC 03O .0201, franchises are perpetual and not subject to termination. Proposed amendments to 15A NCAC 03O .0207 include the removal of franchises from all requirements surrounding production reports since compliant production reports relate to procedures for termination. Proposed amendments to 15A NCAC 03O .0208 align existing rule language with the 2024 Session Law by eliminating references to franchises.

15A NCAC 03O .0210

(STANDARDS AND REQUIREMENTS FOR FRANCHISES)

To conduct aquaculture operations on a shellfish franchise that has not previously conducted operations, the franchise must be activated to ensure staff can verify proper shellfish franchise location, determine required marking poles, and confirm proposed gear aligns with gear allowances for shellfish franchises. Shellfish franchise activation, however, is dependent upon clarity of the location provided in survey language, staff time, and other factors that may increase the timeline required for activation. Once activated and confirmed for compliance, a shellfish franchise can receive an Aquaculture Operation Permit as set forth in 15A NCAC 03O .0503. More franchise acreage cannot be granted, but current franchises, operational or not, can be transferred and/or become operational, as described here. Proposed amendments to 15A NCAC 03O .0210 clarify the proper activation of a shellfish franchise enables the franchise to be permitted, remove the time limit of 30 days following activation, and remove the method for evaluating production of a franchise since franchises are perpetual and not subject to termination.

1 **VI. PROPOSED RULE(S)**

2
3 15A NCAC 03I .0101 is proposed for amendment as follows:

4
5 **SUBCHAPTER 03I – GENERAL RULES**

6
7 **SECTION .0100 – GENERAL RULES**

8
9 **15A NCAC 03I .0101 DEFINITIONS**

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

11 (1) enforcement and management terms:

12 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial
13 fishing operations.

14 (b) "Educational institution" means a college, university, or community college accredited by
15 an accrediting agency recognized by the U.S. Department of Education; an Environmental
16 Education Center certified by the N.C. Department of Environmental Quality Office of
17 Environmental Education and Public Affairs; or a zoo or aquarium certified by the
18 Association of Zoos and Aquariums.

19 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except
20 the Atlantic Ocean.

21 (d) length of finfish:

22 (i) "Curved fork length" means a length determined by measuring along a line tracing
23 the contour of the body from the tip of the upper jaw to the middle of the fork in
24 the caudal (tail) fin.

25 (ii) "Fork length" means a length determined by measuring along a straight line the
26 distance from the tip of the snout with the mouth closed to the middle of the fork
27 in the caudal (tail) fin, except that fork length for billfish is measured from the tip
28 of the lower jaw to the middle of the fork of the caudal (tail) fin.

29 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal
30 insertion of the pectoral fin to the fork of the tail measured along the contour of
31 the body in a line that runs along the top of the pectoral fin and the top of the
32 caudal keel.

33 (iv) "Total length" means a length determined by measuring along a straight line the
34 distance from the tip of the snout with the mouth closed to the tip of the
35 compressed caudal (tail) fin.

36 (e) "Nongovernmental conservation organization" means an organization whose primary
37 mission is the conservation of natural resources. For the purpose of this Chapter, a

1 determination of the organization's primary mission is based upon the Division of Marine
2 Fisheries' consideration of the organization's publicly stated purpose and activities.

3 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:

4 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
5 or deleterious substances, or marine biotoxins that render the consumption of
6 shellfish from those growing waters hazardous. This includes poisonous or
7 deleterious substances as listed in the latest approved edition of the National
8 Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan
9 Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action
10 Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances
11 in Seafood, which is incorporated by reference, including subsequent amendments
12 and editions. A copy of the reference material can be found at
13 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
14 [sanitation-program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost;

15 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
16 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
17 outfall that may contaminate shellfish and cause a food safety hazard as defined
18 in 15A NCAC 18A .0301;

19 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
20 18A .0901 to be in or adjacent to a marina;

21 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
22 18A .0901 to be impacted by other potential sources of pollution that render the
23 consumption of shellfish from those growing waters hazardous, such as a
24 wastewater treatment facility that does not contaminate a shellfish area when it is
25 operating normally but will contaminate a shellfish area and shellfish in that area
26 when a malfunction occurs; or

27 (v) where the Division is unable to complete the monitoring necessary to determine
28 the presence of contamination or potential pollution sources.

29 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
30 area, means, and methods where take or possession is for a recreational purpose.

31 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
32 purpose.

33 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
34 the Fisheries Director through proclamation authority.

35 (j) "Scientific institution" means one of the following entities:

36 (i) an educational institution as defined in this Item;

- 1 (ii) a state or federal agency charged with the management of marine or estuarine
- 2 resources; or
- 3 (iii) a professional organization or secondary school working under the direction of,
- 4 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
- 5 of this Item.
- 6 (2) fishing activities:
- 7 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
- 8 marine or estuarine resources, or other non-native species that may thrive if introduced into
- 9 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
- 10 rearing on private bottom (with or without the superadjacent water column) or in a
- 11 controlled environment. A controlled environment provides and maintains throughout the
- 12 rearing process one or more of the following:
- 13 (i) food;
- 14 (ii) predator protection;
- 15 (iii) salinity;
- 16 (iv) temperature controls; or
- 17 (v) water circulation, utilizing technology not found in the natural environment.
- 18 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
- 19 to work the gear and be within 100 yards of any gear in use by that person at all times.
- 20 Attended does not include being in a building or structure.
- 21 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
- 22 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
- 23 controlled environment. A controlled environment provides and maintains throughout the
- 24 shedding process one or more of the following:
- 25 (i) food;
- 26 (ii) predator protection;
- 27 (iii) salinity;
- 28 (iv) temperature controls; or
- 29 (v) water circulation, utilizing technology not found in the natural environment. A
- 30 shedding operation does not include transporting pink or red-line peeler crabs to
- 31 a permitted shedding operation.
- 32 (d) "Depurate" or "deuration" has the same meaning as defined in the 2019 revision of the
- 33 NSSP Guide for the Control of Molluscan Shellfish, Section I: Purpose and Definitions.
- 34 This definition is incorporated by reference, not including subsequent amendments and
- 35 editions. A copy of the reference material can be found at
- 36 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
- 37 [program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost.

- 1 (e) "Long haul operation" means fishing a seine towed between two vessels.
- 2 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
- 3 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 4 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
- 5 not.
- 6 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
- 7 as defined in G.S. 113-168.
- 8 (i) "Swipe net operations" means fishing a seine towed by one vessel.
- 9 (j) "Transport" means to ship, carry, or cause to be carried or moved by public or private
- 10 carrier by land, sea, or air.
- 11 (k) "Use" means to employ, set, operate, or permit to be operated or employed.
- 12 (3) gear:
- 13 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed
- 14 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch
- 15 is dipped or bailed.
- 16 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom
- 17 at both ends or with one end anchored or attached to the bottom and the other end attached
- 18 to a vessel.
- 19 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal
- 20 Fishing Waters except:
- 21 (i) cast nets;
- 22 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension
- 23 no larger than 18 inches and that by design is collapsed at all times when in the
- 24 water, except when it is being retrieved from or lowered to the bottom;
- 25 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop
- 26 or frame to which the net is attached not exceeding 60 inches along the perimeter;
- 27 (iv) gigs or other pointed implements that are propelled by hand, whether or not the
- 28 implement remains in the hand;
- 29 (v) hand operated rakes no more than 12 inches wide and weighing no more than six
- 30 pounds and hand operated tongs;
- 31 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-
- 32 bait trotline;
- 33 (vii) landing nets used to assist in taking fish when the initial and primary method of
- 34 taking is by the use of hook and line;
- 35 (viii) minnow traps when no more than two are in use;
- 36 (ix) seines less than 30 feet in length;

1 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by
2 mechanical means, including elastic tubing or bands, pressurized gas, or similar
3 means.

4 (d) "Corkline" means the support structure a net is attached to that is nearest to the water
5 surface when in use. Corkline length is measured from the outer most mesh knot at one end
6 of the corkline following along the line to the outer most mesh knot at the opposite end of
7 the corkline.

8 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth
9 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

10 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure
11 attached to the bottom, at both ends of the net.

12 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or
13 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one
14 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,
15 through which fish enter the enclosure. The portion of the net designed to hold or trap fish
16 is completely enclosed in mesh or webbing, except for the openings for fish passage into
17 or out of the net (funnel area).

18 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills
19 in its mesh as a result of net design, construction, mesh length, webbing diameter, or
20 method in which it is used.

21 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest
22 to the water surface when in use. Headrope length is measured from the outer most mesh
23 knot at one end of the headrope following along the line to the outer most mesh knot at the
24 opposite end of the headrope.

25 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or
26 frames. The net has one or more internal funnel-shaped openings with tapered ends directed
27 inward from the mouth, through which fish enter the enclosure. The portion of the net
28 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the
29 openings for fish passage into or out of the net (funnel area).

30 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,
31 wire, or similar material set vertically in the water and held in place by stakes or anchors
32 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead
33 along the top or bottom line, whichever is longer, to the opposite end of the lead.

34 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,
35 and other rakes when towed by engine power, patent tongs, kicking with propellers or
36 deflector plates with or without trawls, and any other method that utilizes mechanical
37 means to harvest clams.

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

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

1 associated with one or more SAV species and include the sediment within these
2 areas; or

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

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

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

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

1 (iii) for recreational fishing operations, when fish are retained in possession by the
2 fisherman.

3 (g) "Licensee" means any person holding a valid license from the Department to take or deal
4 in marine fisheries resources, except as otherwise defined in 15A NCAC 03O .0109.

5 (h) "Logbook" means paper forms provided by the Division and electronic data files generated
6 from software provided by the Division for the reporting of fisheries statistics by persons
7 engaged in commercial or recreational fishing or for-hire operators.

8 (i) "Master" means captain or operator of a vessel or one who commands and has control,
9 authority, or power over a vessel.

10 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who
11 did not possess a valid dealer license for the previous license year in that name. For
12 purposes of license issuance, adding new categories to an existing fish dealers license does
13 not constitute a new dealer.

14 (k) "Office of the Division" means physical locations of the Division conducting license and
15 permit transactions in Wilmington, Morehead City, Washington, and Roanoke Island,
16 North Carolina. Other businesses or entities designated by the Secretary to issue
17 Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not
18 considered Offices of the Division.

19 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs
20 operations of a business entity, such as a corporate officer or executive level supervisor of
21 business operations, and the person responsible for use of the issued license in compliance
22 with applicable statutes and rules.

23 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise
24 directs a recreational fishing tournament and is the holder of the Recreational Fishing
25 Tournament License.

26 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,
27 exchanged, bartered, distributed, or landed.

28 (o) "Transfer" means permanent transferal to another person of privileges under a license for
29 which transfer is permitted. The person transferring the license retains no rights or interest
30 under the license transferred.

31 (p) "Trip ticket" means paper forms provided by the Division and electronic data files
32 generated from software provided by the Division for the reporting of fisheries statistics
33 by licensed fish dealers.

34
35 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*
36 *Eff. January 1, 1991;*
37 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*

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Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;
Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;
Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December
1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;
Readopted Eff. June 1, 2022;
Amended Eff. (Pending legislative review of 15A NCAC 03O .0503); March 24, 2025.

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) "any acres under a shellfish lease" shall include a water column amendment superjacent to a
9 franchise.

10 (2) "application for additional shellfish lease acreage" shall include a water column amendment
11 application to an existing shellfish bottom lease or to a franchise when the franchise holder also
12 holds a shellfish bottom lease.

13 ~~(3)~~(3) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages,
14 racks, bags, or floats.

15 ~~(2)~~(4) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using
16 cages, racks, bags, or floats.

17 ~~(3)~~(5) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or
18 authorized cultch materials on a shellfish ~~lease or franchise~~ lease.

19 ~~(4)~~(6) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish
20 lease ~~or franchise~~ and lawful sale of those shellfish to the public at large or to a licensed shellfish
21 dealer.

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

25 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
26 201.1, or have 10 bushels or more of shellfish per acre;

27 (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a
28 water-dependent shore-based structure, except no minimum setback is required when the area to be
29 leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-
30 201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped
31 shoreline. For the purpose of this Rule, a water-dependent shore-based structure shall include docks,
32 wharves, boat ramps, bridges, bulkheads, and groins;

33 (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;

34 (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing
35 lease areas in the vicinity, shall not interfere with navigation or with existing, traditional uses of the
36 area; and

37 (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

1 (c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a
2 shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to
3 franchises shall meet the standards in G.S. 113-202.2.

4 (d) Shellfish bottom leases ~~and franchises~~ granted or renewed on or before July 1, 2019 and not renewed after July 1,
5 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed
6 by G.S. 113-202:

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

11 (e) Shellfish water column leases granted or renewed on or before July 1, 2019 and not renewed after July 1, 2019
12 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S.
13 113-202.1 and G.S. 113-202.2:

- 14 (1) they produce 40 bushels of shellfish per acre per year; or
- 15 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

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

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

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

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

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

- 32 (1) only shellfish planted or produced as defined in Paragraph (a) of this Rule shall be included in the
33 annual shellfish ~~lease and franchise~~ production reports required by Rule .0207 of this Section.
- 34 (2) if more than one shellfish ~~lease or franchise~~ is used in the production of shellfish, one of the leases
35 ~~or franchises~~ used in the production of the shellfish shall be designated as the producing lease ~~or~~
36 ~~franchise~~ for those shellfish. Each bushel of shellfish shall be produced by only one shellfish ~~lease~~

1 ~~or franchise-lease.~~ Shellfish transplanted between shellfish leases ~~or franchises~~ shall be credited as
2 planting effort on only one ~~lease or franchise-lease.~~

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

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

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

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

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

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

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

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

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

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

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

34 (i) ~~To~~ Consistent with G.S. 113-202, G.S. 113-202.1, and G.S. 113-202.2, to be deemed eligible for by the Secretary
35 to hold additional shellfish lease acreage, persons holding any acres under a shellfish lease ~~or franchise~~ shall meet the
36 following requirements established in at the time of submitting a shellfish lease application for additional shellfish
37 lease acreage:

- 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; S.L. 2024-32, s. 5(a);*
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;*
12 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37, Section 3, as amended by S.L.*
13 *2024-32, Section 5(a)); March 24, 2025.*
14

1 15A NCAC 03O .0207 is proposed for amendment as follows:
2

3 **15A NCAC 03O .0207 SHELLFISH LEASE AND ~~FRANCHISE~~ PRODUCTION REPORTS**

4 (a) The holder or holders of a shellfish lease ~~or franchise~~ shall provide an annual production report to the Division of
5 Marine Fisheries by March 31 of each year showing the amounts of material planted, purchased, and harvested; where
6 and when the material was obtained; and when the material was planted in accordance with Rules .0201 and .0202 of
7 this Section. The report shall include documentation of purchased seed in accordance with Rule .0201 of this Section.

8 (b) The Division shall provide reporting forms annually to each shellfish lease ~~or franchise~~ holder to be used for the
9 annual production report.

10 (c) Failure by the holder or holders of the shellfish lease ~~or franchise~~ to submit the required annual production report
11 or filing an incomplete report or a report containing false information constitutes grounds for termination as set forth
12 in Rule .0208 of this Section.

13

14 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; ~~113-206;~~*
15 *143B-289.52;*

16 *Eff. January 1, 1991;*

17 *Amended Eff. September 1, 1991;*

18 *Readopted Eff. June 1, ~~2022-2022~~;*

19 *Amended Eff. April 1, 2026.*

20

1 15A NCAC 03O .0208 is proposed for amendment as follows:

2
3 **15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES**

4 (a) Procedures for termination of shellfish leases ~~and franchises~~ are provided in G.S. 113-202.

5 (b) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a shellfish lease ~~or franchise~~ holder that failed to meet the
6 requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, or the rules of this Section that govern a determination
7 of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single
8 extension period of no more than two years per contract period upon a showing of hardship by written notice to the
9 Fisheries Director or the Fisheries Director's designee received prior to the expiration of the lease term that documents
10 one of the following occurrences caused or will cause the lease ~~or franchise~~ holder to fail to meet lease requirements:

- 11 (1) death, illness, or incapacity of the shellfish lease ~~or franchise~~ holder or the holder's immediate family
12 as defined in G.S. 113-168 that prevented or will prevent the lease ~~or franchise~~ holder from working
13 the lease;
- 14 (2) damage to the shellfish lease ~~or franchise~~ from hurricanes, tropical storms, or other severe weather
15 events recognized by the National Weather Service;
- 16 (3) shellfish mortality caused by disease, natural predators, or parasites; or
- 17 (4) damage to the shellfish lease ~~or franchise~~ from a manmade disaster that triggers a state emergency
18 declaration or federal emergency declaration.

19 (c) In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease ~~or~~
20 ~~franchise~~ number. In the case of hardship as described in Subparagraph (b)(1) of this Rule, the notice shall also state
21 the name of the shellfish lease ~~or franchise~~ holder or immediate family member and either the date of death or the date
22 of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity
23 occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also
24 include documentation of damage to the shellfish ~~lease or franchise~~ lease. Written notice and supporting
25 documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box
26 769, Morehead City, NC 28557.

27
28 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; ~~113-206;~~*
29 *143B-289.52;*

30 *Eff. January 1, 1991;*

31 *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;*

32 *Temporary Amendment Eff. January 1, 2002; October 1, 2001;*

33 *Amended Eff. May 1, 2017; April 1, 2003;*

34 *Readopted Eff. June 1, ~~2022, 2022~~;*

35 *Amended Eff. April 1, 2026.*

36

1 15A NCAC 03O .0210 is proposed for amendment as follows:

2
3 **15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES**

4 (a) A franchise holder desiring a permit from the Division of Marine Fisheries to conduct shellfish aquaculture on
5 their franchise shall submit a Shellfish Management Plans, Plan, prepared in accordance with the standards for a
6 Shellfish Lease Management Plan in Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries
7 within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

8 (b) The Shellfish Management Plan requirements in Paragraph (a) of this Rule and all other requirements and
9 conditions of this Section affecting management of franchises shall apply to all valid franchises.

10 ~~(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases~~
11 ~~in accordance with Rules .0201 and .0207 of this Section averaged over the most recent three year period after January~~
12 ~~1 following the second anniversary of the dates of recognition of claims as valid franchises and continuing throughout~~
13 ~~the term of Shellfish Management Plans required in Paragraph (a) of this Rule.~~

14
15 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.2; 113-205; 113-206; 143B-289.52;*
16 *Eff. January 1, 1991;*
17 *Amended Eff. October 1, 2008; September 1, 1991;*
18 *Readopted Eff. June 1, ~~2022, 2022~~;*
19 *Amended Eff. April 1, 2026.*

VII. PROPOSED MANAGEMENT OPTIONS

This issue paper presents a single option for consideration, as it is the only option that achieves the objective of the proposed rule changes: to align with current statutory authority and DMF procedures for shellfish leases and franchises, consistent with N.C. Session Law 2024-32, Section 5.(a) and rulemaking requirements in the APA.

- + Complies with State law.
- + Clarifies MFC rules by removing out-of-date requirements.
- Requires lengthy rulemaking process.

VIII. RECOMMENDATION

The DMF recommends supporting the single option presented in this paper.

Prepared by: Zach.Harrison@deq.nc.gov
Catherine.Blum@deq.nc.gov
January 31, 2025

Revised: March 4, 2025
March 10, 2025
April 7, 2025
April 8, 2025
April 23, 2025
May 1, 2025

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

Rule Amendments: 15A NCAC 03I .0101, 03O .0201,.0207,.0208,.0210

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: Minimal
Local government: No
Federal government: No
Substantial impact: No

AUTHORITY

N.C. Session Laws

S.L. 2019-37, Section 3 AN ACT TO PROVIDE FURTHER SUPPORT TO THE SHELLFISH AQUACULTURE INDUSTRY IN NORTH CAROLINA.

S.L. 2024-32, Section 5.(a) AN ACT TO MAKE VARIOUS CHANGES TO THE AGRICULTURAL LAWS OF THIS STATE.

N.C. General Statutes

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. § 113-201.1. Definitions.

G.S. § 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

G.S. § 113-202.1. Water column leases for aquaculture.

G.S. § 113-202.2. Water column leases for aquaculture for perpetual franchises.

G.S. § 113-205. Registration of grants in navigable waters; exercise of private fishery rights.

G.S. § 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

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 N.C.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 N.C.G.S. § 150B-19.1(a). The Division of Marine Fisheries (DMF) identified four MFC rules that contain requirements for franchises (15A NCAC 03O .0201, 03O .0207, 03O .0208, 03O .0210) that are proposed for amendment to align with current statutory authority and DMF procedures for franchises, consistent with N.C. Session Law 2024-32, Section 5.(a). Additionally, a clarifying amendment is proposed in 15A NCAC 03I .0101, Definitions, for Sub-Item (5)(e) for the definition of "holder".

I. Background

A few dozen citizens in North Carolina, and other states as well, hold a chain of deeds for submerged land claims, or claims to any part of the bed under navigable waters or any right of fishery in navigable waters. These submerged land claims originated from King's Grants prior to the United States of America, which was founded on July 4, 1776, when it declared independence from the Kingdom of Great Britain. In 1965, the N.C. General Assembly enacted Session Law 1965-957, which included the creation of N.C. General Statutes (N.C.G.S.) §§ 113-205 and 206 in Article 16. N.C.G.S. § 113-205 outlines a process by which the Secretary of the Department of Environmental Quality, then the Commissioner of Commercial Fisheries, could recognize a submerged land claim through the registration of that claim. The registration of any submerged land claims was required to be submitted by January 1, 1970. There were 39 submerged land claims spanning 515.72 acres of bottom that registered their chain of deeds by this deadline.

N.C.G.S. § 113-206 enabled the Secretary to recognize the submitted submerged land claims based on an oyster or other shellfish grantor as perpetual franchises. These perpetual franchises provide private and perpetual deeded rights to the shellfish present within the recognized boundary of the submerged land claim submitted following the outlined survey requirements of N.C.G.S. § 113-205. The deeds can be, and many have been, subdivided into smaller parcels retaining the private shellfishing rights. Currently there are 49 shellfish franchises. The MFC's authority over such deeded rights is limited. Of the 49 shellfish franchises, 13 franchises (equating to 68.63 acres) are located in shellfish closure area and thus are not operational. The remaining 36 shellfish franchises are not within a shellfish closure area and could be used for private shellfish harvest/ production if an Aquaculture Operation Permit (AOP) is acquired from the DMF. Only nine shellfish franchise holders also hold an AOP. The nine operational franchises are owned by eight individuals and span 257.62 acres.

In 1989, the N.C. General Assembly enacted Session Law 1989-423, enabling superjacent (lying over or above something else) water column amendments to shellfish leases, and Session Law 1989-958, enabling water column amendments to be added superjacent to perpetual franchises. In 2015, the N.C. General Assembly also enacted Session Law 2015-241, requiring the development of the Senator Jean Preston Oyster Sanctuary Network.

Shellfish aquaculture is the artificial propagation of shellfish stocks conducted on shellfish leases and is regulated by N.C.G.S. § 113 Article 16. Part of the administration and management of shellfish leases, as defined in Article 16 and further defined in MFC Rule, includes the commercial production requirements for a leaseholder to retain their lease. Within the commercial production requirements is the planting, or placing shellfish seed, cultch, or shell onto the lease for the purpose of growing out or collecting wild spat and growing out for harvest, and harvesting, or the commercial harvest and sale of cultured shellfish captured through the N.C. Trip Ticket system. Shellfish franchises enable the holder of the deed to conduct shellfish harvest with the same gear allowances as active shellfish bottom leases consistent with N.C.G.S. § 113-202(r). Management of active shellfish leases also includes compliance with rules and statutes concerning subjects such as proper marking of a shellfish lease and permitting of the aquaculture activities occurring on the lease.

Continuing with its interest in developing shellfish aquaculture and oyster restoration in the state, the N.C. General Assembly passed Session Law 2019-37 effective July 1, 2019. The subtitle of the law is "an act to provide further support to the shellfish aquaculture industry in North Carolina." Section 3 of the law increased production and planting requirements for shellfish leases, which originally included franchises recognized pursuant to § N.C.G.S. 113-206. Subsection 3(d) of the Act required 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. At its May 2023 business meeting, the MFC began the rulemaking process and then on May 24, 2024, voted to give final approval to adopt the amendments to conform this rule to the requirements of this law. The rule was automatically subject to legislative review during the 2025 legislative session and then became effective March 24, 2025.

Even though the increased production and planting requirements in Session Law 2019-37 originally included franchises, DMF has understood that because franchises recognized pursuant to § N.C.G.S. 113-206 are perpetual, it did not have the authority to terminate them, and thus subjecting a franchise to production requirements would have no consequence. Effective July 3, 2024, the N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of § N.C.G.S. 113-202. Even before the MFC adopted the rule amendments in May 2024, the DMF was already developing proposed clarifying amendments to affected MFC rules but needed to await the outcome of legislative review of the rules in 2025 to have the opportunity to propose additional amendments, which are described in this report.

II. Proposed Rule Changes

15A NCAC 03I.0101

The proposed amendment to the term "Holder" clarifies the distinction between persons issued a license, permit, or shellfish lease and those possessing a shellfish franchise. Currently, MFC Rule

15A NCAC 03I .0101(5)(e) defines "Holder" as someone lawfully issued a license, permit, franchise, lease, or assignment. Since franchises are granted, not issued, the updated definition will read: "'Holder" means a person who has been lawfully issued in the person's name a license, permit, shellfish lease, or assignment, or who possesses a shellfish franchise recognized pursuant to G.S. 113-206."

15A NCAC 03O .0201

Remove franchises from production requirements to align with statutory authority.

Proposed amendments to 15A NCAC 03O .0201 include the removal of franchises from all production requirements, as they are grounds for termination of a leasehold only. Shellfish franchises recognized under N.C.G.S. § 113-206 are perpetual. DMF has understood that, because franchises are perpetual, it did not have the authority to terminate them, and thus subjecting a franchise to production requirements would have no consequence. The N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37. The MFC's authority over these private and protected deeded rights is limited to subjects such as proper marking requirements and permitting of the aquaculture activities occurring.

Clarify how shellfish bottom lease dates align with production requirements under recent statutory changes.

Proposed amendments to 15A NCAC 03O .0201(d),(e),(f), and (g) further clarify the shellfish leases that are held to the production requirements of each paragraph in their respective contracts based on their granting and renewal dates. Separate from the discussion about franchises, the enacting of Session Law 2019-37 also changed the annual production requirements for active shellfish leases, effective after July 1, 2019. The newly created production requirements, therefore, apply to new leases granted after July 1, 2019 and any leases renewed after July 1, 2019. The corresponding production requirements are found in 15A NCAC 03O .0201(f) and (g). The 10-year contracts for active leases that were originally granted on or before July 1, 2019 and have not yet been renewed since July 1, 2019 still reflect the previous production requirements in 15A NCAC 03O .0201(d) and (e).

Clarify the process and criteria by which DEQ determines eligibility to hold additional shellfish lease acreage in accordance with statute.

Proposed amendments to 15A NCAC 03O .0201(a) and (i) further clarify the authority for determining eligibility and the time at which eligibility is determined. Proposed changes also clarify to whom the eligibility determination would apply and that water column amendments are considered additional acreage.

Table 1 summarizes the scenarios when a person would be subject to 15A NCAC 03O .0201(i). The shellfish leasing process outlined in N.C.G.S. § 113-202, N.C.G.S. § 113-202.1, and N.C.G.S. § 113-202.2, establishes the Secretary of the Department of Environmental Quality as the leasing authority. N.C.G.S. § 113-202.1 and N.C.G.S. § 113-202.2 enable a water column amendment superjacent to existing or new bottom leases and to franchises, respectively. These

amendments are considered legally distinct and result in an additional shellfish lease contract for the water column lease, though the water column cannot extend outside of the footprint of the bottom lease or franchise.

Table 1. Summary of scenarios for shellfish bottom leases, shellfish franchises, and water column amendments when a person would be subject to 15A NCAC 03O .0201(i). Note that the proposed amendments to Rule 03O .0201 will not change how the rule is currently being implemented. Rather, the amendments will add clarity and align with existing statutes and practices as presented in Table 1.

Subject to 15A NCAC 03O .0503(i)
Current shellfish bottom lease holder applying for another shellfish bottom lease
Current shellfish bottom lease holder applying for water column amendment
Current shellfish franchise holder, who is also a shellfish bottom lease holder, applying for a water column amendment to their franchise
Current shellfish franchise holder with a water column amendment to their franchise applying for a shellfish bottom lease
Current holder of more than one shellfish franchise with at least one water column amendment to their franchise applying for an additional water column amendment to a franchise
Not subject to 15A NCAC 03O .0503(i)
Current shellfish bottom lease holder (with or without a water column amendment) who comes into possession of a shellfish franchise
Current shellfish franchise holder who does not hold a shellfish bottom lease or water column amendment applying for a water column amendment to their franchise
Current shellfish franchise holder (with or without a water column amendment) who comes into possession of an additional shellfish franchise (with or without a water column amendment)

15A NCAC 03O .0207

15A NCAC 03O .0208

Update rules to reflect statutory authority as it relates to franchises and provide clarity.

As discussed for 15A NCAC 03O .0201, franchises are perpetual and not subject to termination. Proposed amendments to 15A NCAC 03O .0207 include the removal of franchises from all requirements surrounding production reports since compliant production reports relate to procedures for termination. Proposed amendments to 15A NCAC 03O .0208 align existing rule language with the 2024 Session Law by eliminating references to franchises.

15A NCAC 03O .0210

Remove time limit by which a franchise holder must submit their initial Shellfish Management Plan after recognition of a valid chain of title and make conforming statutory changes.

Proposed amendments to 15A NCAC 03O .0210 clarify the proper activation of a shellfish franchise as enabling the permitting of the franchise, remove the time limit of 30 days following activation, and remove the method for evaluating production of a franchise since franchises are perpetual and not subject to termination. To conduct aquaculture operations on a shellfish

franchise that has not previously conducted operations, the franchise must be activated to ensure staff can verify proper shellfish franchise location, determine required marking poles, and confirm proposed gear aligns with gear allowances for shellfish franchises. Shellfish franchise activation, however, is dependent upon clarity of the location provided in survey language, staff time, and other factors that may increase the timeline required for activation. Once activated and confirmed for compliance, a shellfish franchise can receive an Aquaculture Operation Permit as set forth in 15A NCAC 03O .0503. More franchise acreage cannot be granted, but current franchises, operational or not, can be transferred and/or become operational through the above-described process.

III. Fiscal Analysis

- The proposed amendments are designed to align DMF rules with North Carolina law, existing DMF practices, and deed conditions. Specifically, the amendments update planting and harvesting requirements for franchises and leases to ensure consistency with North Carolina law.
- None of the changes will impose new requirements on franchise holders or lease holders. As such, DMF does not anticipate these amendments to create measurable economic impacts for stakeholders.
- Compared to the current regulatory baseline, no procedural adjustments or additional costs to the state are expected.
- By standardizing terminology across rules and laws, the amendments promote clarity and operational efficiency for both DMF staff and stakeholders. While these benefits are difficult to quantify, they may lead to minor administrative efficiencies.
- The proposed rule changes will not affect local governments.

1 **Appendix: Proposed Rules**

2
3 15A NCAC 03I .0101 is proposed for amendment as follows:

4
5 **SUBCHAPTER 03I – GENERAL RULES**

6
7 **SECTION .0100 – GENERAL RULES**

8
9 **15A NCAC 03I .0101 DEFINITIONS**

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

11 (1) enforcement and management terms:

12 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial
13 fishing operations.

14 (b) "Educational institution" means a college, university, or community college accredited by
15 an accrediting agency recognized by the U.S. Department of Education; an Environmental
16 Education Center certified by the N.C. Department of Environmental Quality Office of
17 Environmental Education and Public Affairs; or a zoo or aquarium certified by the
18 Association of Zoos and Aquariums.

19 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except
20 the Atlantic Ocean.

21 (d) length of finfish:

22 (i) "Curved fork length" means a length determined by measuring along a line tracing
23 the contour of the body from the tip of the upper jaw to the middle of the fork in
24 the caudal (tail) fin.

25 (ii) "Fork length" means a length determined by measuring along a straight line the
26 distance from the tip of the snout with the mouth closed to the middle of the fork
27 in the caudal (tail) fin, except that fork length for billfish is measured from the tip
28 of the lower jaw to the middle of the fork of the caudal (tail) fin.

29 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal
30 insertion of the pectoral fin to the fork of the tail measured along the contour of
31 the body in a line that runs along the top of the pectoral fin and the top of the
32 caudal keel.

33 (iv) "Total length" means a length determined by measuring along a straight line the
34 distance from the tip of the snout with the mouth closed to the tip of the
35 compressed caudal (tail) fin.

36 (e) "Nongovernmental conservation organization" means an organization whose primary
37 mission is the conservation of natural resources. For the purpose of this Chapter, a

determination of the organization's primary mission is based upon the Division of Marine Fisheries' consideration of the organization's publicly stated purpose and activities.

- (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
 - (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous. This includes poisonous or deleterious substances as listed in the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost;
 - (ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall that may contaminate shellfish and cause a food safety hazard as defined in 15A NCAC 18A .0301;
 - (iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;
 - (iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous, such as a wastewater treatment facility that does not contaminate a shellfish area when it is operating normally but will contaminate a shellfish area and shellfish in that area when a malfunction occurs; or
 - (v) where the Division is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.
- (g) "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.
- (i) "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (j) "Scientific institution" means one of the following entities:
 - (i) an educational institution as defined in this Item;

- 1 (ii) a state or federal agency charged with the management of marine or estuarine
2 resources; or
- 3 (iii) a professional organization or secondary school working under the direction of,
4 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
5 of this Item.
- 6 (2) fishing activities:
- 7 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
8 marine or estuarine resources, or other non-native species that may thrive if introduced into
9 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
10 rearing on private bottom (with or without the superadjacent water column) or in a
11 controlled environment. A controlled environment provides and maintains throughout the
12 rearing process one or more of the following:
- 13 (i) food;
- 14 (ii) predator protection;
- 15 (iii) salinity;
- 16 (iv) temperature controls; or
- 17 (v) water circulation, utilizing technology not found in the natural environment.
- 18 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
19 to work the gear and be within 100 yards of any gear in use by that person at all times.
20 Attended does not include being in a building or structure.
- 21 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
22 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
23 controlled environment. A controlled environment provides and maintains throughout the
24 shedding process one or more of the following:
- 25 (i) food;
- 26 (ii) predator protection;
- 27 (iii) salinity;
- 28 (iv) temperature controls; or
- 29 (v) water circulation, utilizing technology not found in the natural environment. A
30 shedding operation does not include transporting pink or red-line peeler crabs to
31 a permitted shedding operation.
- 32 (d) "Depurate" or "deuration" has the same meaning as defined in the 2019 revision of the
33 NSSP Guide for the Control of Molluscan Shellfish, Section I: Purpose and Definitions.
34 This definition is incorporated by reference, not including subsequent amendments and
35 editions. A copy of the reference material can be found at
36 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
37 [program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost.

- 1 (e) "Long haul operation" means fishing a seine towed between two vessels.
- 2 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
- 3 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 4 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
- 5 not.
- 6 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
- 7 as defined in G.S. 113-168.
- 8 (i) "Swipe net operations" means fishing a seine towed by one vessel.
- 9 (j) "Transport" means to ship, carry, or cause to be carried or moved by public or private
- 10 carrier by land, sea, or air.
- 11 (k) "Use" means to employ, set, operate, or permit to be operated or employed.
- 12 (3) gear:
- 13 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed
- 14 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch
- 15 is dipped or bailed.
- 16 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom
- 17 at both ends or with one end anchored or attached to the bottom and the other end attached
- 18 to a vessel.
- 19 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal
- 20 Fishing Waters except:
- 21 (i) cast nets;
- 22 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension
- 23 no larger than 18 inches and that by design is collapsed at all times when in the
- 24 water, except when it is being retrieved from or lowered to the bottom;
- 25 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop
- 26 or frame to which the net is attached not exceeding 60 inches along the perimeter;
- 27 (iv) gigs or other pointed implements that are propelled by hand, whether or not the
- 28 implement remains in the hand;
- 29 (v) hand operated rakes no more than 12 inches wide and weighing no more than six
- 30 pounds and hand operated tongs;
- 31 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-
- 32 bait trotline;
- 33 (vii) landing nets used to assist in taking fish when the initial and primary method of
- 34 taking is by the use of hook and line;
- 35 (viii) minnow traps when no more than two are in use;
- 36 (ix) seines less than 30 feet in length;

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

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

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

1 associated with one or more SAV species and include the sediment within these
2 areas; or

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

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

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

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

1 (iii) for recreational fishing operations, when fish are retained in possession by the
2 fisherman.

3 (g) "Licensee" means any person holding a valid license from the Department to take or deal
4 in marine fisheries resources, except as otherwise defined in 15A NCAC 03O .0109.

5 (h) "Logbook" means paper forms provided by the Division and electronic data files generated
6 from software provided by the Division for the reporting of fisheries statistics by persons
7 engaged in commercial or recreational fishing or for-hire operators.

8 (i) "Master" means captain or operator of a vessel or one who commands and has control,
9 authority, or power over a vessel.

10 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who
11 did not possess a valid dealer license for the previous license year in that name. For
12 purposes of license issuance, adding new categories to an existing fish dealers license does
13 not constitute a new dealer.

14 (k) "Office of the Division" means physical locations of the Division conducting license and
15 permit transactions in Wilmington, Morehead City, Washington, and Roanoke Island,
16 North Carolina. Other businesses or entities designated by the Secretary to issue
17 Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not
18 considered Offices of the Division.

19 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs
20 operations of a business entity, such as a corporate officer or executive level supervisor of
21 business operations, and the person responsible for use of the issued license in compliance
22 with applicable statutes and rules.

23 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise
24 directs a recreational fishing tournament and is the holder of the Recreational Fishing
25 Tournament License.

26 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,
27 exchanged, bartered, distributed, or landed.

28 (o) "Transfer" means permanent transferal to another person of privileges under a license for
29 which transfer is permitted. The person transferring the license retains no rights or interest
30 under the license transferred.

31 (p) "Trip ticket" means paper forms provided by the Division and electronic data files
32 generated from software provided by the Division for the reporting of fisheries statistics
33 by licensed fish dealers.

34
35 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*
36 *Eff. January 1, 1991;*
37 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*

1 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*
2 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*
3 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*
4 *Amended Eff. August 1, 2000;*
5 *Temporary Amendment Eff. August 1, 2000;*
6 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*
7 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*
8 *Readopted Eff. June 1, 2022;*
9 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0503); March 24, 2025.*

10

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) "any acres under a shellfish lease" shall include a water column amendment superjacent to a
9 franchise.

10 (2) "application for additional shellfish lease acreage" shall include a water column amendment
11 application to an existing shellfish bottom lease or to a franchise when the franchise holder also
12 holds a shellfish bottom lease.

13 ~~(1)~~(3) "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages,
14 racks, bags, or floats.

15 ~~(2)~~(4) "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using
16 cages, racks, bags, or floats.

17 ~~(3)~~(5) "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or
18 authorized cultch materials on a shellfish ~~lease or franchise~~ lease.

19 ~~(4)~~(6) "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish
20 lease ~~or franchise~~ and lawful sale of those shellfish to the public at large or to a licensed shellfish
21 dealer.

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

25 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
26 201.1, or have 10 bushels or more of shellfish per acre;

27 (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a
28 water-dependent shore-based structure, except no minimum setback is required when the area to be
29 leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-
30 201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped
31 shoreline. For the purpose of this Rule, a water-dependent shore-based structure shall include docks,
32 wharves, boat ramps, bridges, bulkheads, and groins;

33 (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;

34 (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing
35 lease areas in the vicinity, shall not interfere with navigation or with existing, traditional uses of the
36 area; and

37 (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

- 1 (c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a
2 shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to
3 franchises shall meet the standards in G.S. 113-202.2.
- 4 (d) Shellfish bottom leases ~~and franchises~~ granted or renewed on or before July 1, 2019 and not renewed after July 1,
5 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed
6 by G.S. 113-202:
- 7 (1) they produce 10 bushels of shellfish per acre per year; and
 - 8 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
9 per year, or a combination of cultch and seed shellfish where the percentage of required cultch
10 planted and the percentage of required seed shellfish planted totals at least 100 percent.
- 11 (e) Shellfish water column leases granted or renewed on or before July 1, 2019 and not renewed after July 1, 2019
12 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S.
13 113-202.1 and G.S. 113-202.2:
- 14 (1) they produce 40 bushels of shellfish per acre per year; or
 - 15 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.
- 16 (f) Shellfish bottom leases ~~and franchises~~ granted or renewed after July 1, 2019 shall be terminated unless they meet
17 the following requirements, in addition to the standards in and as allowed by G.S. 113-202:
- 18 (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year
19 period beginning in year five of the shellfish bottom ~~lease or franchise; lease; or~~
 - 20 (2) for intensive culture bottom operations, the holder of the shellfish bottom ~~lease or franchise~~ provides
21 evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive
22 culture bottom operations, the holder of the ~~lease or franchise~~ plants a minimum of 15,000 shellfish
23 seed per acre per year.
- 24 (g) Shellfish water column leases granted or renewed after July 1, 2019 shall be terminated unless they meet the
25 following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:
- 26 (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year
27 period beginning in year five of the shellfish water column lease; or
 - 28 (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000
29 shellfish seed per acre annually.
- 30 (h) The following standards shall be applied to determine compliance with Paragraphs (d), (e), (f), and (g) of this
31 Rule:
- 32 (1) only shellfish planted or produced as defined in Paragraph (a) of this Rule shall be included in the
33 annual shellfish ~~lease and franchise~~ production reports required by Rule .0207 of this Section.
 - 34 (2) if more than one shellfish ~~lease or franchise~~ is used in the production of shellfish, one of the leases
35 ~~or franchises~~ used in the production of the shellfish shall be designated as the producing ~~lease or~~
36 ~~franchise~~ for those shellfish. Each bushel of shellfish shall be produced by only one shellfish ~~lease~~

- 1 ~~or franchise-lease.~~ Shellfish transplanted between shellfish leases ~~or franchises~~ shall be credited as
2 planting effort on only one ~~lease or franchise-lease.~~
- 3 (3) production information and planting effort information shall be compiled and averaged separately
4 to assess compliance with the requirements of this Rule. Shellfish bottom leases ~~and franchises~~
5 granted on or before July 1, 2019 shall meet both the production requirement and the planting effort
6 requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in
7 compliance. Shellfish bottom leases ~~and franchises~~ granted after July 1, 2019 and shellfish water
8 column leases shall meet either the production requirement or the planting effort requirement within
9 the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance.
- 10 (4) all bushel measurements shall be in standard U.S. bushels.
- 11 (5) in determining production ~~and marketing~~ averages and planting effort averages for information not
12 reported in bushel measurements, the following conversion factors shall be used:
- 13 (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
14 (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds
15 of fossil stone equal one bushel.
- 16 (6) production rate averages shall be computed irrespective of transfer of the shellfish ~~lease or~~
17 ~~franchise-lease.~~ The production rates shall be averaged for the following situations using the time
18 periods described:
- 19 (A) for an initial shellfish bottom ~~lease or franchise-lease,~~ ~~lease,~~ over the consecutive full calendar
20 years remaining on the bottom lease ~~or franchise~~ contract after December 31 following the
21 second anniversary of the initial bottom ~~lease or franchise;~~ ~~lease;~~
22 (B) for a renewal shellfish bottom ~~lease or franchise-lease,~~ ~~lease,~~ over the consecutive full calendar
23 years beginning January 1 of the final year of the previous bottom lease ~~or franchise~~ term
24 and ending December 31 of the final year of the current bottom lease ~~or franchise~~ contract;
25 (C) for a shellfish water column lease, over the first five-year period for an initial water column
26 lease and over the most recent five-year period thereafter for a renewal water column lease;
27 or
28 (D) for a shellfish bottom lease ~~or franchise~~ issued an extension period under Rule .0208 of
29 this Section, over the most recent five-year period.
- 30 (7) in the event that a portion of an existing shellfish lease ~~or franchise~~ is obtained by a new lease ~~or~~
31 ~~franchise~~ holder, the production history for the portion obtained shall be a percentage of the
32 originating lease ~~or franchise~~ production equal to the percentage of the area of lease ~~or franchise~~ site
33 obtained to the area of the originating ~~lease or franchise-lease.~~
- 34 (i) ~~To~~ Consistent with G.S. 113-202, G.S. 113-202.1, and G.S. 113-202.2, to be deemed eligible for by the Secretary
35 to hold additional shellfish lease acreage, persons holding any acres under a shellfish lease ~~or franchise~~ shall meet the
36 following requirements established in: at the time of submitting a shellfish lease application for additional shellfish
37 lease acreage:

- 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; S.L. 2024-32, s. 5.(a);*

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;*

12 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37, Section 3, as amended by S.L.*
13 *2024-32, Section 5.(a)); March 24, 2025.*

14

15A NCAC 03O .0207 is proposed for amendment as follows:

15A NCAC 03O .0207 SHELLFISH LEASE AND ~~FRANCHISE~~ PRODUCTION REPORTS

- (a) The holder or holders of a shellfish lease ~~or franchise~~ shall provide an annual production report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted, purchased, and harvested; where and when the material was obtained; and when the material was planted in accordance with Rules .0201 and .0202 of this Section. The report shall include documentation of purchased seed in accordance with Rule .0201 of this Section.
- (b) The Division shall provide reporting forms annually to each shellfish lease ~~or franchise~~ holder to be used for the annual production report.
- (c) Failure by the holder or holders of the shellfish lease ~~or franchise~~ to submit the required annual production report or filing an incomplete report or a report containing false information constitutes grounds for termination as set forth in Rule .0208 of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; ~~113-206;~~
143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. June 1, ~~2022~~, 2022;
Amended Eff. April 1, 2026.*

15A NCAC 030 .0208 is proposed for amendment as follows:

15A NCAC 030 .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES ~~AND FRANCHISES~~

(a) Procedures for termination of shellfish leases ~~and franchises~~ are provided in G.S. 113-202.

(b) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a shellfish lease ~~or franchise~~ holder that failed to meet the requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, or the rules of this Section that govern a determination of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director or the Fisheries Director's designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the lease ~~or franchise~~ holder to fail to meet lease requirements:

- (1) death, illness, or incapacity of the shellfish lease ~~or franchise~~ holder or the holder's immediate family as defined in G.S. 113-168 that prevented or will prevent the lease ~~or franchise~~ holder from working the lease;
- (2) damage to the shellfish lease ~~or franchise~~ from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;
- (3) shellfish mortality caused by disease, natural predators, or parasites; or
- (4) damage to the shellfish lease ~~or franchise~~ from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

(c) In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease ~~or franchise~~ number. In the case of hardship as described in Subparagraph (b)(1) of this Rule, the notice shall also state the name of the shellfish lease ~~or franchise~~ holder or immediate family member and either the date of death or the date of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also include documentation of damage to the shellfish ~~lease or franchise.~~ lease. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; ~~113-206;~~
143B-289.52;*

Eff. January 1, 1991;

Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;

Temporary Amendment Eff. January 1, 2002; October 1, 2001;

Amended Eff. May 1, 2017; April 1, 2003;

Readopted Eff. June 1, ~~2022, 2022~~;

Amended Eff. April 1, 2026.

15A NCAC 03O .0210 is proposed for amendment as follows:

15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES

(a) A franchise holder desiring a permit from the Division of Marine Fisheries to conduct shellfish aquaculture on their franchise shall submit a Shellfish Management ~~Plans, Plan,~~ prepared in accordance with the standards for a Shellfish Lease Management Plan in Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

(b) The Shellfish Management Plan requirements in Paragraph (a) of this Rule and all other requirements and conditions of this Section affecting management of franchises shall apply to all valid franchises.

~~(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in accordance with Rules .0201 and .0207 of this Section averaged over the most recent three year period after January 1 following the second anniversary of the dates of recognition of claims as valid franchises and continuing throughout the term of Shellfish Management Plans required in Paragraph (a) of this Rule.~~

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.2; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; September 1, 1991;
Readopted Eff. June 1, ~~2022, 2022~~;
Amended Eff. April 1, 2026.*