

NC Marine Fisheries Commission

Rulemaking

November 2022 Business Meeting

01 Rule Suspensions Memo

01 Rulemaking Update Memo

05 2022-2023 Annual Rulemaking
Cycle

05 N.C. Register Oct 37.07
(Excerpt)

01 Oct. 3, 2022 News Release for
Two Rule Comment Period-
Hearing



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

October 21st, 2022

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Steve Poland, Fisheries Management Section Chief

SUBJECT: Temporary Rule Suspensions

Issue

In accordance with the North Carolina Division of Marine Fisheries Resource Management Policy Number 2014-2, Temporary Rule Suspension, the North Carolina Marine Fisheries Commission will vote on any new rule suspensions that have occurred since the last meeting of the commission.

Findings

Rule 15A NCAC 03R .0117 delineates boundaries for oyster sanctuaries in internal coastal waters and was recently amended to add newly established and expanded sanctuaries. After publication and adoption of the newly amended rule, it was determined that coordinates published for the Pea Island and Raccoon Island sanctuaries were incorrectly recorded in the text. Additionally, the Swan Island Sanctuary boundaries were expanded since the publication of the rule and no longer consistent with the published coordinates. To ensure that the sanctuaries continue to be protected according to the FMP restrictions, the director suspended the portions of the rule that incorrectly delineated the sanctuaries and issued Proclamation [SF-6-2022](#) which provides the correct and current boundary coordinates as well as harvest restrictions. The division requests an indefinite suspension to portions of the rule that incorrectly delineates the sanctuaries to provide time for the rule to be amended.

Action Needed

****Vote to suspend subsections (c), (i), and (j) of section (1) of NCMFC Rule 15A NCAC 03R .0117 OYSTERS SANCTUARIES for an indefinite period****

Overview

In accordance with policy, the division will report current rule suspensions previously approved by the commission as non-action items. They include:

NCMFC Rule 15A NCAC 03M .0515 (a)(2) Dolphin

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to adjust the recreational vessel limit to complement management of

dolphin under the South Atlantic Fishery Management Council's Amendment 10 to the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic. This suspension was implemented in Proclamation [FF-30-2022](#).

NCMFC Rule 15A NCAC 03L .0105 (2) Recreational Shrimp Limits

Suspension of portion of this rule for an indefinite period. Suspension of this rule allows the division to modify the recreational possession limit of shrimp by removing the four quarts heads on and two and a half quarts heads off prohibition from waters closed to shrimping in accordance with Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in Proclamation [SH-4-2022](#).

NCMFC Rule 15A NCAC 03J .0103 (h) Gill Nets, Seines, Identification, Restrictions

Continued suspension a portion of this rule for an indefinite period. Suspension of this rule allows the division to implement year-round small mesh gill net attendance requirements in certain areas of the Tar-Pamlico and Neuse rivers systems. This action was taken as part of a department initiative to review existing small mesh gill net rules to limit yardage and address attendance requirements in certain areas of the state. This suspension continues in Proclamation [M-13-2022](#).

NCMFC Rule 15A NCAC 03R .0110 (4) and (5) Crab Spawning Sanctuaries

Continued suspension portions of this rule is for an indefinite period. Suspension of this rule allows the division to revise the boundaries for the Drum Inlet and Barden Inlet crab spawning sanctuaries in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. This suspension was implemented in Proclamation M-7-2020 and continues in [M-12-2022](#).

NCMFC Rules 15A NCAC 03L .0201 (a) and (b) Crab Harvest Restrictions, 03L .0203 (a) Crab Dredging and 03J .0301 (a)(1), (g), and (h) Pots

Suspension of portions of these rules is for an indefinite period. Suspension of these rules allows the division to implement requirements for the blue crab fishery in accordance with Amendment 3 to the N.C. Blue Crab Fishery Management Plan. These suspensions were implemented in Proclamation [M-1-2021](#).

NCMFC Rule 15A NCAC 03L .0103 (a)(1) Prohibited Nets, Mesh Lengths and Areas

Continued suspension of portions of this rule for an indefinite period. This allows the division to adjust trawl net minimum mesh size requirements in accordance with the Amendment 2 to the North Carolina Shrimp Fishery Management Plan. This suspension was implemented in proclamation SH-3-2019 and continues in [SH-1-2022](#).

NCMFC Rule 15A NCAC 03J .0501 (e)(2) Definitions and Standards for Pound Nets and Pound Net Sets

Continued suspension portions of this rule for an indefinite period. This allows the division to increase the minimum mesh size of escape panels for flounder pound nets in accordance with Amendment 2 of the North Carolina Southern Flounder Fishery Management Plan. This suspension was implemented in Proclamation [M-34-2015](#).

**NCMFC Rule 15A NCAC 03M .0519 (a) and (b) Shad & 03Q .0107 (4) Special Regulations:
Joint Waters**

Continued suspension portions of these rules for an indefinite period. This allows the division to change the season and creel limit for American shad under the management framework of the North Carolina American Shad Sustainable Fishery Plan. These suspensions were continued in Proclamation [FF-67-2021\(Revised\)](#)



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

KATHY B. RAWLS
Director

Oct. 21, 2022

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Rulemaking Update

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A.

Action Needed

For informational purposes only; no action is needed at this time.

Overview

- Periodic Review and Readoption of Rules – Requirements
 - North Carolina G.S. § 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - 15A NCAC 03 – Marine Fisheries: On June 14, 2018, the Rules Review Commission (RRC) approved the readoption schedule of June 30, 2022, for 172 MFC rules.
 - 15A NCAC 18A – Sanitation: On Jan. 16, 2020, the RRC approved the readoption schedule of June 30, 2024, for 164 MFC rules.
 - The MFC must readopt these rules by these deadlines or the rules will expire and be removed from the N.C. Administrative Code.
- At its November meeting, the MFC is scheduled to receive an update about the three ongoing packages of proposed rules.

2021-2022 Annual Rulemaking Cycle Update

"Package B" (109 rules)

At its August 2021 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for 109 rules. The MFC gave final approval of the rules at its February 2022 business meeting. There were 38 rules that were not automatically subject to legislative review that became effective June 1 or July 1, 2022. Most fishermen saw very little change from these rules. A news release and a rulebook supplement were distributed on each of these dates. The remaining 71 rules are automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1, and thus are expected to have a delayed effective date. Three rules, covering highly efficient gears, artificial reefs, and research sanctuaries, became effective Aug. 23, 2022, which was the 31st legislative day of the 2022 short session; a news release and a rulebook supplement were distributed. The remaining 68 rules will be available for legislative review during the 2023 long session.

These 68 rules cover the following subjects:

- Shellfish leasing regulations;
- 15A NCAC 03 rules with conforming changes;
- 15A NCAC 03I, 03J, 03K, 03O, and 03R for imported species, recordkeeping, gear, marketing shellfish, and licenses;
- Commercial blue crab harvest and gear regulations;
- Permit and license suspensions and revocations and pound net gears; and
- 15A NCAC 03K and 18A crustacea and shellfish.

"Package C" (9 rules)

At its March 2022 special meeting, the MFC approved Notice of Text for Rulemaking to begin the process for nine joint rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. The rules were proposed for readoption with no changes. The MFC gave final approval of the rules at its June 23, 2022, special meeting, and the Wildlife Resources Commission (WRC) gave its concurrence of the MFC's rules at its June 28, 2022, special meeting. These nine MFC rules and the 11 WRC joint rules (that the WRC approved April 14, 2022, and for which the MFC gave its concurrence May 26, 2022) became effective Sept. 1, 2022, except for one MFC rule (15A NCAC 03Q .0107) that is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1 and will be available for legislative review during the 2023 long session.

2022-2023 Annual Rulemaking Cycle Update (2 rules)

At its August 2022 business meeting, the MFC approved Notice of Text for Rulemaking to begin the rule amendment and readoption process for two rules. A table of the steps in the process is included in the briefing materials and a summary of the proposed rules by subject is provided below. The proposed rules were published in the Oct. 3, 2022, issue of the *N.C. Register*, beginning the public comment process; an excerpt is included in the briefing materials. The 60-day public comment period is from Oct. 3 through 5 p.m. Dec. 2, 2022, with a single public hearing via WebEx on Nov. 1. Details are described in the Oct. 3 news release, which is included in the briefing materials. The MFC is scheduled to receive the public comments and vote on final approval of the rules at its February 2023 business meeting. The mutilated finfish rule is automatically subject to legislative review pursuant to Session Law 2019-198 and G.S. § 14-4.1 and would not be reviewed until the 2024 short session. The intended effective date of the marinas rule is May 1, 2023.

MUTILATED FINFISH (15A NCAC 03M .0101)

Proposed amendments to this rule would provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a MFC rule or a proclamation issued under the authority of a MFC rule. The original intent of the mutilated finfish rule was to provide added resource protection for finfish species subject to a size or bag limit. Proposed amendments to this rule would provide flexibility to manage current conditions for the use of certain finfish species as cut bait, as well as variable conditions that could occur in the future, all while continuing to protect fisheries resources. Proposed amendments would also clarify requirements, benefitting affected stakeholders and Marine Patrol officers.

Due to current possession limits, use of American eel, spot, Atlantic croaker, and bluefish as cut bait creates conflicts with the current mutilated finfish rule based on communication from stakeholders, feedback from Marine Patrol officers, and implications from stock assessments and fishery management plans. Additionally, changes to the current exception for mullet may be needed based on the outcome of the striped mullet stock assessment and management changes developed through the fishery management plan process. It is likely that species beyond the five outlined could require similar consideration in the future. Therefore, the proposed changes would amend the rule in a way that can resolve current conflicts with species used as cut bait, provide flexibility to manage variable conditions, and allow all requirements for a particular finfish species to be aggregated in a single proclamation (including for bait usage) for more comprehensive management, all while continuing to protect fisheries resources. It is important to note there is no guarantee that species allowed to be cut now would continue or that relief would be granted for the use of species that are prohibited now. The amended rule would only provide the Fisheries Director the authority to use her discretion to determine, in the context of the then-current variable conditions and available data and information, if it would be appropriate to issue a proclamation that would allow a particular species to be cut for use as bait.

MARINAS, DOCKING FACILITIES, AND OTHER MOORING AREAS (15A NCAC 18A .0911)

This rule is proposed for readoption pursuant to the requirements of G.S. § 150B-21.3A and proposed for amendment. The marinas rule, as it is currently written, may not be fully in compliance with national program requirements for shellfish harvesting closures and does not use the best available methodology to do so for the protection of public health. Proposed amendments would help ensure that North Carolina remains in full compliance with national requirements, allow the Division of Marine Fisheries to determine necessary buffer closures based on a more scientific and public health-based rationale, and make implementation and enforceability clearer.

For the harvest classification of shellfish growing waters in and around marinas, the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, and that a dilution analysis be used to determine the size of any harvest closure that may be necessary because of the pollution assessment. The current rule already requires that a pollution assessment be used to determine the necessary classification in and around the marina docks, but it does not require a dilution analysis to determine closure size, and instead prescribes specific closure measurements based on a limited number of marina characteristics. The proposed rule would maintain the pollution assessment requirement and would also require that a dilution analysis be used to determine closure size. Also, the elimination of an exemption clause from the rule would allow for more clarity among stakeholders and help ensure consistent, clear, and more efficient enforcement across marinas. With the elimination of this portion of the rule, slip owners at these marinas would have additional flexibility with the type and size of boat they are able to dock there. Division of Marine Fisheries and Division of Coastal Management staffs spend resources repeatedly enforcing marinas' designations over time with changing homeowners' associations. Division of Marine Fisheries resources could be used in other ways if the exemption is eliminated. Overall, the acreage of water that could potentially change designation is an extremely small amount: approximately 58 acres out of 1.46 million acres that are open to shellfish harvest.

2023-2024 Annual Rulemaking Cycle Preview

Division of Marine Fisheries staff will provide a preview of potential rules in the MFC’s 2023-2024 annual rulemaking cycle at its November 2022 business meeting. Additional rules in 15A NCAC 18A proposed for readoption are expected to be part of the rulemaking cycle. Please see Figure 1, detailed in the Background Information section below, that shows the MFC’s rule readoption schedule. This cycle is scheduled to begin the rulemaking process at the MFC's May 2023 business meeting. Proposed rules would have an earliest effective date of April 1, 2024, except for rules automatically subject to legislative review per Session Law 2019-198 and N.C.G.S. § 14-4.1. Rules that are subject would likely be reviewed during the 2024 short session.

Background Information

Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A

Session Law 2013-413, the Regulatory Reform Act of 2013, implemented requirements known as the "Periodic Review and Expiration of Existing Rules." These requirements are codified in a new section of Article 2A of Chapter 150B of the General Statutes in N.C.G.S. § 150B-21.3A. Under the requirements, each agency is responsible for conducting a review of all its rules at least once every 10 years in accordance with a prescribed process.

The review has two parts. The first is a report phase, which has concluded, followed by the readoption of rules. An evaluation of the rules under the authority of the MFC was undertaken in two lots (see Figure 1.) The MFC has 211 rules in Chapter 03 (Marine Fisheries), of which 172 are subject to readoption, and 164 rules in Chapter 18, Subchapter 18A (Sanitation) that are also subject to readoption. The MFC is the body with the authority for the approval steps prescribed in the process.

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Readopted	116 Rules Readopted	6/30/22 deadline		
Subchapter 18A (164 rules)			Report	42 Rules Readopted	42 Rules Readopted	Rule Readoption (1)	Rule Readoption (79)	6/30/24 deadline

Figure 1. Marine Fisheries Commission rule readoption schedule to comply with N.C.G.S. § 150B-21.3A, Periodic Review and Expiration of Existing Rules.

N.C. Marine Fisheries Commission 2022-2023 Annual Rulemaking Cycle

November 2022

Time of Year	Action
February-July 2022	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
Aug. 19, 2022	MFC approved Notice of Text for Rulemaking
Oct. 3, 2022	Publication of proposed rules in the <i>North Carolina Register</i>
Oct. 3-Dec. 2, 2022	Public comment period held
Nov. 1, 2022	Public hearing held via WebEx at 6 p.m.
Feb. 22-24, 2023	MFC votes on approval of permanent rules
April 20, 2023	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
May 1, 2023	Proposed effective date of 1 rule not subject to legislative review
May 1, 2023	Rulebook supplement available online
2024 legislative session	Possible effective date of 1 rule subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
June 30, 2024	Readoption deadline for 15A NCAC 18A

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2022 – December 2022

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
36:13	01/03/22	12/08/21	01/18/22	03/04/22	03/21/22	04/21/2022	05/01/22	09/30/22
36:14	01/18/22	12/22/21	02/02/22	03/21/22	04/20/22	05/19/2022	06/01/22	10/15/22
36:15	02/01/22	01/10/22	02/16/22	04/04/22	04/20/22	05/19/2022	06/01/22	10/29/22
36:16	02/15/22	01/25/22	03/02/22	04/18/22	04/20/22	05/19/2022	06/01/22	11/12/22
36:17	03/01/22	02/08/22	03/16/22	05/02/22	05/20/22	06/16/2022	07/01/22	11/26/22
36:18	03/15/22	02/22/22	03/30/22	05/16/22	05/20/22	06/16/2022	07/01/22	12/10/22
36:19	04/01/22	03/11/22	04/16/22	05/31/22	06/20/22	07/21/2022	08/01/22	12/27/22
36:20	04/18/22	03/25/22	05/03/22	06/17/22	06/20/22	07/21/2022	08/01/22	01/13/23
36:21	05/02/22	04/08/22	05/17/22	07/01/22	07/20/22	08/18/2022	09/01/22	01/27/23
36:22	05/16/22	04/25/22	05/31/22	07/15/22	07/20/22	08/18/2022	09/01/22	02/10/23
36:23	06/01/22	05/10/22	06/16/22	08/01/22	08/22/22	09/15/2022	10/01/22	02/26/23
36:24	06/15/22	05/24/22	06/30/22	08/15/22	08/22/22	09/15/2022	10/01/22	03/12/23
37:01	07/01/22	06/10/22	07/16/22	08/30/22	09/20/22	10/20/2022	11/01/22	03/28/23
37:02	07/15/22	06/23/22	07/30/22	09/13/22	09/20/22	10/20/2022	11/01/22	04/11/23
37:03	08/01/22	07/11/22	08/16/22	09/30/22	10/20/22	11/17/2022	12/01/22	04/28/23
37:04	08/15/22	07/25/22	08/30/22	10/14/22	10/20/22	11/17/2022	12/01/22	05/12/23
37:05	09/01/22	08/11/22	09/16/22	10/31/22	11/21/22	12/15/2022	01/01/23	05/29/23
37:06	09/15/22	08/24/22	09/30/22	11/14/22	11/21/22	12/15/2022	01/01/23	06/12/23
37:07	10/03/22	09/12/22	10/18/22	12/02/22	12/20/22	01/19/2023	02/01/23	06/30/23
37:08	10/17/22	09/26/22	11/01/22	12/16/22	12/20/22	01/19/2023	02/01/23	07/14/23
37:09	11/01/22	10/11/22	11/16/22	01/03/23	01/20/23	02/16/2023	03/01/23	07/29/23
37:10	11/15/22	10/24/22	11/30/22	01/17/23	01/20/23	02/16/2023	03/01/23	08/12/23
37:11	12/01/22	11/07/22	12/16/22	01/30/23	02/20/23	03/16/2023	04/01/23	08/28/23
37:12	12/15/22	11/22/22	12/30/22	02/13/23	02/20/23	03/16/2023	04/01/23	09/11/23

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

- (1) Aluminum;
- (2) Antimony;
- (3) Arsenic;
- (4) Barium;
- (5) Beryllium;
- (6) Boron;
- (7) Cadmium;
- (8) Calcium;
- (9) Chromium, Hexavalent (Chromium VI);
- (10) Chromium, Total;
- (11) Chromium, Trivalent (Chromium III);
- (12) Cobalt;
- (13) Copper;
- (14) Hardness, Total (Calcium + Magnesium);
- (15) Iron;
- (16) Lead;
- (17) Lithium;
- (18) Magnesium;
- (19) Manganese;
- (20) Mercury;
- (21) Molybdenum;
- (22) Nickel;
- (23) Potassium;
- (24) Phosphorus;
- (25) Selenium;
- (26) Silica;
- (27) Silver;
- (28) Sodium;
- (29) Strontium;
- (30) Thallium;
- (31) Tin;
- (32) Titanium;
- (33) Vanadium; and
- (34) Zinc.

- ~~(17)~~(18) Organochlorine Pesticides;
- ~~(18)~~(19) Organophosphorus Pesticides;
- (20) Per- and Polyfluoroalkyl Substances (PFAS);
- ~~(19)~~(21) Phenols;
- ~~(20)~~(22) Phthalate Esters;
- ~~(21)~~(23) Polychlorinated Biphenyls;
- ~~(22)~~(24) Polynuclear Aromatic Hydrocarbons;
- ~~(23)~~(25) Purgeable Aromatics;
- ~~(24)~~(26) Purgeable Halocarbons;
- ~~(25)~~(27) Purgeable Organics;
- ~~(26)~~(28) Total Organic Halides;
- ~~(27)~~(29) Total Petroleum Hydrocarbons – Diesel Range Organics;
- ~~(28)~~(30) Total Petroleum Hydrocarbons – Gasoline Range Organics; and
- ~~(29)~~(31) Volatile Petroleum Hydrocarbons.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to amend the rule cited as 15A NCAC 03M .0101 and readopt with substantive changes the rule cited as 15A NCAC 18A .0911.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/mfc-proposed-rules>

Proposed Effective Date:
 15A NCAC 03M .0101- Subject to Legislative Review
 15A NCAC 18A .0911-May 1, 2023

Public Hearing:
Date: November 1, 2022
Time: 6:00 p.m.

Location:
 WebEx Events meeting link:
<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e18e682448138378a2107f624ed6aad80> Event number: 2435 343 7920
 Event password: 1234
 Event phone number: 1-415-655-0003
 Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:
Rule 15A NCAC 03M .0101 is proposed for amendment to provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a Marine Fisheries Commission rule or a proclamation issued under the authority of a Marine Fisheries Commission rule.
Rule 15A NCAC 18A .0911 is proposed for amendment in accordance with G.S. 150B-21.3A to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate

(d) Organics: Each of the organic Parameters listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable organic Parameters are as follows:

- (1) 1,2-Dibromoethane (EDB); 1,2-Dibromo-3-chloro-propane (DBCP); 1,2,3-Trichloropropane (TCP);
- (2) Acetonitrile;
- (3) Acrolein, Acrylonitrile;
- (4) Adsorbable Organic Halides;
- (5) Base/Neutral and Acid Organics;
- (6) Benzidines;
- (7) Chlorinated Acid Herbicides;
- (8) Chlorinated Hydrocarbons;
- (9) Chlorinated Phenolics;
- (10) Explosives;
- (11) Extractable Petroleum Hydrocarbons;
- (12) Haloethers;
- (13) N-Methylcarbamates;
- (14) Nitroaromatics and Isophorone;
- (15) Nitrosamines;
- (16) Nonhalogenated Volatile Organics;
- (17) Organic Fluorine;

commerce; allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around marinas based on a more scientific and public health-based rationale; and make implementation and enforceability of requirements clearer.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557 (Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>)

Comment period ends: December 2, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule is automatically subject to legislative review: S.L. 2019-198: 15A NCAC 03M .0101

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03M - FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH

It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a ~~size or harvest restriction~~ possession limit, including size limit, recreational bag limit, commercial trip limit, or season, without having head and tail attached, ~~except:~~ unless otherwise specified in a rule of the Marine Fisheries Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

- (1) mullet when used for bait;
- (2) hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing operation may be cut for bait at any one time; and

- (3) ~~tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0911 ~~MARINAS; MARINAS, DOCKING FACILITIES; FACILITIES, AND OTHER MOORING AREAS~~

~~Classification of shellfish~~ Shellfish growing waters with respect to marinas, docking facilities, and other mooring areas shall be ~~done~~ classified in accordance with the following:

- (1) ~~All~~ all waters within the immediate vicinity of a marina shall be classified as prohibited to the harvesting of shellfish for human consumption. ~~Excluded from this classification are marinas with less than 30 slips, having no boats over 24 feet in length, no boats with heads and no boats with cabins. Marinas permitted prior to the effective date of this Rule may continue to have boats up to 21 feet in length with cabins and not be subject to the mandatory water classification of prohibited in the immediate vicinity of the marina.~~
- (2) Owners of marinas conforming to the exclusion provisions in Item (1) of this Rule shall make quarterly reports to the Division. These reports shall include the following information:
 - (a) number of slips;
 - (b) number and length of boats;
 - (c) number and length of boats with cabins;
 - (d) number of boats with heads; and
 - (e) number of boats with "porta-potties."

~~Reports to the Division shall cover the occupancy of the marina on the fifth day of the first month of each quarter of the calendar year and shall be post marked on or before the fifteenth day of the reporting month.~~

- (3) ~~The minimum requirement for the prohibited area beyond the marina shall be based on the number of slips and the type of marina (open or closed system). The prohibited area shall extend beyond the marina from all boat slips, docks, and docking facilities, according to the following:~~

	Number of Slips in Marina		Size of Prohibited Area (Feet)	
	Open System	Closed System	Open System	Closed System
11-25	100		200	
26-50	150		275	
51-75	175		325	

76-100

200

400

Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over 100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater.

(2) the Division of Marine Fisheries shall conduct a dilution analysis to determine the minimum extent of the area adjacent to a marina that shall be classified as prohibited to the harvesting of shellfish for human consumption. The prohibited area shall be sized to dilute the concentration of fecal coliform bacteria to less than 14 MPN, as determined by the dilution analysis. The dilution analysis shall be conducted yearly and shall incorporate the following:

- (a) the findings of the shoreline survey, including the presence of a sewage pumpout system or dump station; and
- (b) the physical factors influencing the dilution and dispersion of human wastes; and

(4)(3) After a marina is put in use water quality impacts of marina facilities may require a change in classification. In determining if a change in classification is necessary, marina design, marina usage, dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors will be considered. slip counts and services for marinas, docking facilities, and mooring areas in close proximity to one another shall be combined for the purposes of determining the necessary prohibited area as required in Items (1) and (2) of this Rule. Docking facilities and mooring areas each with three slips or more and marinas shall be considered to be in close proximity to one another if the dilution analysis indicates that the necessary dilution areas meet or overlap.

(5) Areas, other than marinas, where boats are moored or docked may be considered on a case-by-case basis with respect to sanitary significance relative to actual or potential contamination and classification shall be made as necessary.

(6) The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close proximity to each other are expected to adversely affect public trust waters. When these situations occur the Division will recommend closures exceeding those outlined in Item (3) of

this Rule. The following guides will be used in determining close proximity:

- (a) marina entrance canals within 225 feet of each other;
- (b) open system marinas within 450 feet of each other (Mooring areas shall be considered open system marinas);
- (c) where closure areas meet or overlap; and
- (d) open system marinas within 300 feet of a marina entrance canal.

Authority ~~G.S. 130A-230;~~ 113-134; 113-182; 113-221.2; 143B-289.52.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16Q .0103, .0104 and amend the rules cited as 21 NCAC 16Q .0202, .0302, .0405 and .0703.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdentalboard.org

Proposed Effective Date: February 1, 2023

Public Hearing:

Date: November 17, 2022

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16Q .0103 is proposed to address the practice requirements for a permit holder to administer general anesthesia, moderate conscious sedation, and moderate pediatric sedation.

21 NCAC 16Q .0104 is proposed to address requirements for facility inspections and evaluations.

21 NCAC 16Q .0202 is proposed for amendment to set out modified requirements for a general anesthesia permit applicant or holder.

21 NCAC 16Q .0302 is proposed for amendment to set out modified requirements for a moderate conscious sedation permit applicant or holder.

21 NCAC 16Q .0405 is proposed for amendment to set out modified requirements for a moderate pediatric conscious sedation permit applicant or holder.

21 NCAC 16Q .0703 is proposed for amendment to change requirements for adverse occurrence reporting.

Comments may be submitted to: Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

Release: Immediate
Date: Oct. 3, 2022

Contact: [Patricia Smith](#)
Phone: 252-726-7021

MEDIA ADVISORY: Comment period opens, public hearing scheduled for two marine fisheries rules

MOREHEAD CITY – The N.C. Marine Fisheries Commission is accepting public comment on the proposed re-adoption and amendment of one rule under a state-mandated periodic review schedule and proposed amendments to a second rule.

The first rule sets requirements for the harvest classification of shellfish growing waters in and around marinas, docking facilities, and other mooring areas. It is proposed for re-adoption and amendment to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate commerce.

Proposed amendments would also allow the N.C. Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around these areas based on a more scientific and public health-based rationale and make implementation and enforceability of requirements clearer.

The second rule is proposed with amendments to mutilated finfish requirements. Amendments would provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule so that only species subject to a possession limit are subject to the mutilated finfish requirements unless otherwise specified in a N.C. Marine Fisheries Commission rule or a proclamation issued under the authority of a N.C. Marine Fisheries Commission rule.

A public hearing will be held by web conference on Nov. 1 at 6 p.m. A listening station will be established at the N.C. Division of Marine Fisheries Central District Office at 5285 Highway 70 West, Morehead City. The public may join the meeting online; however, those who wish to comment during the hearing must register to speak by noon on the day of the hearing.

Members of the public also may submit written comments through an online form or through the mail to N.C. Marine Fisheries Commission Rules Comments, P.O. Box 769, Morehead City, N.C. 28557. Comments must be posted online or be received by the N.C. Division of Marine Fisheries by 5 p.m. Dec. 2, 2022.

Links to the public hearing registration form and online comment form, as well as text of the proposed rules and links to join the meeting, can be found on the N.C. Marine Fisheries Commission's [Proposed Rules Page](#).

The proposed rule changes will be presented to the N.C. Marine Fisheries Commission for final approval in February 2023 and have an earliest effective date of May 1, 2023.

For questions about the N.C. Marine Fisheries Commission rulemaking process, email [Catherine Blum](#), rules coordinator for the N.C. Division of Marine Fisheries.

WHO: Marine Fisheries Commission
WHAT: Public Hearing for Proposed Rules
WHEN: Nov. 1 at 6 p.m.

Website: <http://www.ncdenr.gov>
Facebook: <http://www.facebook.com/ncdeq>
Twitter: <http://twitter.com/NCDEQ>
RSS Feed: <http://portal.ncdenr.org/web/opa/news-releases-rss>
1601 Mail Service Center, Raleigh, NC 27699-1601

Roy Cooper
Governor

Elizabeth S. Biser
Secretary



Kathy B. Rawls
Director

WHERE: Meeting by Web Conference
[Click Here](#) for Information and to Sign Up to Speak

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