

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

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

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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.

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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.*

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

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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.

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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.*

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

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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.

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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.*

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

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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.~~

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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.*