

1 15A NCAC 03O .0201 is readopted with changes as published in 35:07 NCR 761-762 as follows:

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3 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH ~~BOTTOM~~ LEASES**
4 **AND FRANCHISES ~~AND WATER COLUMN LEASES~~**

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

8 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
9 201.1, or have 10 bushels or more of shellfish per acre;

10 (2) the proposed shellfish lease area shall not be closer than ~~100-250 feet to from a developed shoreline,~~
11 ~~shoreline or a water-dependent shore-based structure,~~ except no minimum setback is required when
12 the area to be leased borders the applicant's property, the property of "riparian owners" as defined
13 in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by
14 undeveloped ~~shoreline; and shoreline.~~ For the purposes of this Rule, a water-dependent shore-based
15 structure shall include docks, wharves, boat ramps, bridges, bulkheads, and groins;

16 (3) ~~the proposed shellfish lease area shall not be closer than 250 feet to an existing [shellfish] lease;~~

17 (4) ~~the proposed shellfish lease area, either alone or when considered cumulatively with existing~~
18 ~~[shellfish] leases in the area, shall not interfere with navigation or with existing, traditional uses of~~
19 ~~the area; and~~

20 ~~(3)(5)~~ the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

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

24 (c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet
25 the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

26 (1) they produce and market 10 bushels of shellfish per acre per year; and

27 (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre
28 per year, or a combination of cultch and seed shellfish where the percentage of required cultch
29 planted and the percentage of required seed shellfish planted totals at least 100 percent.

30 (d) Water-Shellfish water column leases shall be terminated unless they meet the following requirements, in addition
31 to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

32 (1) they produce and market 40 bushels of shellfish per acre per year; or

33 (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

34 (e) The following standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:

35 (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing
36 activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and

franchises," or "shellfish production on leases and franchises" shall be included in the shellfish lease and franchise reports required by Rule .0207 of this Section.

- (2) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one shellfish lease or franchise. Shellfish transplanted between shellfish leases or franchises shall be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. The shellfish lease or franchise shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish bottom leases. The shellfish lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish water column leases.
- (4) All bushel measurements shall be in standard U.S. bushels.
- (5) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.
- (6) Production and marketing rate averages shall be computed irrespective of transfer of the shellfish lease or franchise. The production and marketing rates shall be averaged for the following situations using the time periods described:
 - (A) for an initial shellfish bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
 - (B) for a renewal shellfish bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
 - (C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
 - (D) for a shellfish bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.
- (7) In the event that a portion of an existing shellfish lease or franchise is obtained by a new owner, lease or franchise holder, the production history for the portion obtained shall be a percentage of the

1 originating lease or franchise production equal to the percentage of the area of lease or franchise site
2 obtained to the area of the originating lease or franchise.

3 (f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the
4 requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease
5 acreage to the Division of Marine Fisheries.

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7 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206;*
8 *143B-289.52;*
9 *Eff. January 1, 1991;*
10 *Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*
11 *Temporary Amendment Eff. October 1, 2001;*
12 *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;*
13 *Readopted Eff. (Pending legislative review of 15A NCAC 03O .0204).*

1 15A NCAC 03O .0202 is readopted with changes as published in 35:07 NCR 762-763 as follows:

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3 **15A NCAC 03O .0202 SHELLFISH ~~BOTTOM AND WATER COLUMN~~ LEASE APPLICATIONS**

4 (a) Application forms are available from the ~~Division's office headquarters at~~ Division of Marine Fisheries, 3441
5 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for a shellfish bottom and water column
6 leases-lease. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including
7 an inset vicinity map showing the location of the proposed shellfish lease with detail sufficient to permit on-site
8 identification pursuant to G.S. 113-202(d1), and must [shall] meet the information requirements pursuant to G.S. 113-
9 202(d).

10 (b) As a part of the application, the applicant shall submit a ~~management plan~~ Shellfish Lease Management Plan for
11 the area to be leased for shellfish aquaculture purposes on a form provided by the Division ~~which meets the following~~
12 ~~standards that shall:~~

- 13 (1) ~~States state~~ the methods through which the applicant will cultivate and produce shellfish consistent
14 with the minimum requirements ~~set forth in 15A NCAC 03O .0201;~~ in accordance with Rule .0201
15 of this Section;
- 16 (2) ~~States state~~ the time intervals during which various phases of ~~the~~ cultivation and production plan
17 will be achieved;
- 18 (3) ~~States state~~ the materials and techniques that will be utilized in management of the shellfish lease;
- 19 (4) ~~Forecasts forecast~~ the results expected to be achieved by the management-Shellfish Lease
20 Management Plan activities; ~~and~~
- 21 (5) ~~Describes describe~~ the productivity of any other shellfish leases or franchises held by the
22 ~~applicant-applicant;~~ and
- 23 (6) state the locations of each corner defining the area to be leased with no more than eight corners.

24 (c) The completed application, map or diagram, and ~~management plan~~ Shellfish Lease Management Plan for the
25 requested shellfish lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1), 113-
26 202(d1), G.S. 113-202.1(c)(1), and G.S. 113-202.2(c)(1). An incomplete application shall be returned and not
27 considered further until re-submitted complete with all required information.

28 (d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees
29 holding one or more shellfish cultivation leases ~~which that~~ are not meeting production requirements, shall complete
30 ~~and submit an examination, with a minimum of 70 percent correct answers, based on an educational package the~~
31 Shellfish Aquaculture Education Program provided by the ~~Division of Marine Fisheries~~ Division. The ~~examination~~
32 Shellfish Aquaculture Education Program shall ~~demonstrate the applicant's knowledge of;~~ provide the applicant
33 information on shellfish aquaculture including:

- 34 (1) ~~the shellfish lease application process;~~
- 35 (2) ~~shellfish lease planting and production requirements;~~
- 36 (3) ~~lease marking requirements;~~
- 37 (4) ~~lease fees;~~

- 1 ~~(5) shellfish harvest area closures due to pollution;~~
2 ~~(6) safe handling practices;~~
3 ~~(7) lease contracts and renewals;~~
4 ~~(8) lease termination criteria; and~~
5 ~~(9) shellfish cultivation techniques.~~
6 (1) shellfish lease application process;
7 (2) shellfish lease requirements and techniques;
8 (3) shellfish sanitation and National Shellfish Sanitation Program requirements;
9 (4) shellfish harvest requirements;
10 (5) aquaculture permits;
11 (6) best management practices; and
12 (7) shellfish lease user conflict avoidance.

13 (e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall
14 identify mark the area for which a shellfish lease is requested with stakes at each corner in accordance with ~~15A~~
15 ~~NCAC 03O .0204(a)(1)(A).Rule .0204(a)(1)(A) of this Section.~~ The applicant shall attach to each stake a sign,
16 provided by the Division containing the name of the applicant, the date the application was filed, and the estimated
17 acres. The applicant shall be responsible for ensuring the sign remains in place until the shellfish lease application
18 process is completed.

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20 History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-206; 143B-289.52;
21 Eff. January 1, 1991;
22 Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991;
23 Readopted Eff. (Pending legislative review of 15A NCAC 03O .0204).

1 15A NCAC 03O .0204 is readopted with changes as published in 35:07 NCR 763-764 as follows:

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3 **15A NCAC 03O .0204 MARKING SHELLFISH LEASES AND ~~WATER COLUMN LEASES AND~~**
4 **FRANCHISES**

5 (a) All shellfish ~~bottom leases, franchises, and water column~~ leases and franchises shall be marked by the leaseholder
6 lease or franchise holder as follows:

7 (1) Shellfish bottom leases and franchises shall be marked by:

8 (A) ~~Stakes~~ stakes of wood or plastic material ~~at least three inches in diameter no less than three~~
9 ~~inches in diameter and no more than 12 inches in diameter at the water level mean high~~
10 ~~water mark and extending at least four feet above the mean high water mark mark for each~~
11 ~~corner, except stakes more than 12 inches in diameter approved as part of a Coastal Area~~
12 ~~Management Act Permit issued in accordance with G.S. 113A-118 and G.S. 113-229 shall~~
13 ~~be allowed. The stakes shall be firmly jetted or driven into the bottom at each corner corner~~
14 ~~as [set forth]~~ identified in Rule .0202(b)(6) of this Section.

15 (B) ~~Signs~~ signs displaying the number of the shellfish lease or franchise and the name of the
16 ~~owner lease or franchise holder~~ printed in letters at least three inches high ~~must shall~~ be
17 firmly attached to each corner stake.

18 (C) yellow light reflective tape or yellow light reflective devices on each corner stake. The
19 yellow light reflective tape or yellow light reflective devices shall be affixed to each corner
20 stake, shall cover a vertical distance of not less than 12 inches, and shall be visible from all
21 directions.

22 ~~(C)(D)~~ Supplementary ~~supplementary~~ stakes of wood or plastic ~~material, material no less than~~
23 ~~three inches in diameter and no more than four inches in diameter, not farther apart than~~
24 ~~50 yards 150 feet or closer together than 50 feet and extending at least four feet above the~~
25 ~~mean high water mark, must shall be placed along each boundary, except when such would~~
26 ~~interfere if doing so interferes~~ with the use of traditional navigation channels.

27 (2) ~~Water-Shellfish water~~ column leases shall be marked by ~~anchoring two yellow buoys, meeting the~~
28 ~~material and minimum size requirements specified in 15A NCAC 3J .0103(b) at each corner of the~~
29 ~~area or by larger buoys, posts and by signs giving notice and providing caution in addition to the~~
30 ~~required signs as identified and approved by the Secretary in the Management Plan.~~ management
31 plan.]Shellfish Lease Management Plan as set forth in Rule .0202 of this Section.

32 (b) Stakes marking areas of management within shellfish bottom leases or franchises, as approved in the management
33 plan, Shellfish Lease Management Plan, must shall conform to ~~Subparagraph (a)(1)(C) Part (a)(1)(D)~~ of this Rule and
34 may not exceed one for each 1,200 square feet. Marking at concentrations of stakes greater than one for each 1,200
35 square feet constitutes use of the water column and a shellfish water column lease is required in accordance with G.S.
36 113-202.1 or G.S. 113-202.2.

(c) All areas claimed in filings made pursuant to G.S. 113-205 as deeded bottoms through oyster grants issued by the county clerk of court or as private bottoms through perpetual franchises issued by the Shellfish Commission shall be marked in accordance with Paragraph (a) of this Rule, except the sign shall include the number of the franchise rather than the number of the shellfish lease. However, claimed areas not being managed and cultivated shall not be marked.

~~(d) It is unlawful to fail to remove all stakes, signs, and markers within 30 days of receipt of notice from the Secretary pursuant to Departmental Rule 15A NCAC 1G .0207 that a G.S. 113-205 claim to a marked area has been denied.~~

~~(e)(d)~~ It ~~is~~ shall be unlawful to exclude or attempt to exclude the public from allowable public trust use of navigable waters on shellfish leases and franchises including, but not limited to, including fishing, hunting, swimming, wading, wading, and navigation.

~~(f)(e)~~ The Division has no duty to protect any shellfish bottom lease, franchise, or water column lease or franchise not marked in accordance with Paragraph (a) of this Rule.

History Note: Authority G.S. 76-40; 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. September 1, 1997; March 1, 1994; October 1, 1992; September 1, 1991;

Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).