

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0140

DEADLINE FOR RECEIPT: Friday, April 9, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, how will the determination of "equally impervious" be made and by whom?

Also on line 4, what is "easily" here?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0140 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0140 FLOORS**

4 Floors shall be of concrete or other equally impervious material, constructed so that they may be easily cleaned and
5 shall be sloped so that water drains.

6
7 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

8 *Eff. October 1, 1992;*

9 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0141

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, and (b), line 5, what is "easily cleanable"?

In (c), line 7, what is "properly" and "good repair" here?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0141 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0141 WALLS AND CEILINGS**

4 (a) Walls and ceilings shall be constructed of smooth, easily cleanable, non-corrosive, impervious material.

5 (b) Insulation on cooked crustacea cooler walls shall be covered to the ceiling with a smooth, easily cleanable,
6 non-corrosive, impervious material.

7 (c) Doors and windows shall be properly fitted and maintained in good repair.
8

9 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

10 *Eff. October 1, 1992;*

11 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0142 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0142 LIGHTING**

4 (a) Natural or artificial lighting shall be provided in all parts of the facility. Minimum lighting intensities shall be as
5 follows:

6 (1) 50 foot-candles on working surfaces in the picking and packing rooms and areas.

7 (2) 10 foot-candles measured at a height of 30 inches above the floor throughout the rest of the
8 processing portion of the facility.

9 (b) Light bulbs within the processing portion of the facility shall be shatterproof or shielded to prevent product
10 contamination in case of breakage.

11
12 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

13 *Eff. October 1, 1992;*

14 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0143 is readopted as published in 35:07 NCR 772 as follows:

2

3 **15A NCAC 18A .0143 VENTILATION**

4 All rooms and areas shall be ventilated.

5

6 *History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.*

7 *Eff. October 1, 1992;*

8 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0146

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, what does "clean" mean here?

On line 5, what is "properly stored"? As determined by whom?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0146 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0146 PREMISES**

4 (a) Premises under the control of the owner shall be kept clean at all times. Waste materials, rubbish, other ~~articles~~
5 articles, or litter shall not be permitted to accumulate on the premises. Other items shall be properly stored.

6 (b) Measures shall be taken to prevent the harborage and breeding of insects, ~~rodents~~ rodents, and other vermin on
7 premises.

8
9 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

10 *Eff. October 1, 1992;*

11 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0150

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On lines 5-6, how are these methods approved? Based upon what?

And you are saying that the Department or the Division may separately approve the method? Since the Division is in the Department, how do these differ?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0150 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0150 SEWAGE DISPOSAL**

4 All sewage and other liquid wastes shall be disposed of in a public sewer system or in the absence of a public sewer
5 system, by an on-site method approved by the Division of Marine Fisheries or the Department of ~~Environment, Health,~~
6 ~~and Natural Resources.~~ Environmental Quality.

7
8 *History Note:* Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

9 *Eff. October 1, 1992;*

10 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0154 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0154 EMPLOYEES' PERSONAL ARTICLES**

4 Employees' street clothing, aprons, ~~gloves-gloves,~~ and personal articles shall not be stored in rooms or areas described
5 in Rule .0159(b) of this Section.

6
7 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

8 *Eff. October 1, 1992;*

9 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0155

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 5, what does "clean" mean here?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0155 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0155 SUPPLY STORAGE**

4 Shipping containers, ~~boxes-boxes~~, and other supplies shall be stored in a storage room or area. The storage room or
5 area shall be kept clean.

6
7 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

8 *Eff. October 1, 1992;*

9 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0159

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, what is a "continuous flow" here? Does your regulated public know?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0159 is readopted as published in 35:07 NCR 772 as follows:

2
3 **15A NCAC 18A .0159 SEPARATION OF OPERATIONS**

4 (a) Facility design shall provide for continuous flow of raw materials and product to prevent contamination by
5 exposure to areas involved in earlier processing steps, ~~refuse-refuse~~, or other areas subject to contamination.

6 (b) The following processes shall be carried out in separate rooms or areas:

7 (1) ~~Raw-raw~~ crustacea receiving or ~~refrigeration-refrigeration~~;

8 (2) ~~Crustacea-cooking~~-crustacea cooking;

9 (3) ~~Cooked-cooked~~ crustacea ~~air-cool~~-air-cool;

10 (4) ~~Cooked-cooked~~ crustacea ~~refrigeration-refrigeration~~;

11 (5) ~~Picking-picking~~;

12 (6) ~~Packing-packing~~;

13 (7) ~~Picked-picked~~ crustacea meat ~~refrigeration-refrigeration~~;

14 (8) ~~Pasteurizing/thermal processing~~-pasteurizing or thermal processing;

15 (9) ~~Machine picking-machine~~ picking;

16 (10) ~~Repacking-repacking~~; and

17 (11) ~~Other-other~~ processes when carried out in conjunction with the cooking of crustacea or crustacea
18 meat.

19
20 *History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.*

21 *Eff. October 1, 1992;*

22 *Amended Eff. April 1, 1997;*

23 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0160

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, I take it you are referring to "fresh crustacea" as the term is defined in Rule 18A .0134(11)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0160 is readopted as published in 35:07 NCR 772-773 as follows:

2
3 **15A NCAC 18A .0160 RAW CRUSTACEA RECEIVING AND REFRIGERATION**

4 (a) Only fresh crustacea shall be accepted for processing.

5 (b) Within two hours of receipt at the facility, crustacea shall be cooked or placed in a refrigerated area maintaining
6 a temperature of 50° F (~~40~~ 10° C) or below.

7
8 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

9 *Eff. October 1, 1992;*

10 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0163

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 5, what does "clean" mean in this context?

In (b), line 8, what does "immediately" mean here?

Also on line 8, what is an "accurate, operating thermometer"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0163 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0163 COOKED CRUSTACEA REFRIGERATION**

4 (a) The cooked crustacea cooler shall be large enough to store all cooked crustacea and maintain a minimum
5 temperature of 40° F (4.4° C). The cooler shall open directly into the picking room or into a clean, enclosed area
6 leading into the picking room.

7 (b) Cooked crustacea shall be stored at a temperature between 33° F (0.5° C) and 40° F (4.4° C) ambient air
8 temperature if not immediately processed. The cooler shall be equipped with an accurate, operating thermometer.

9
10 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

11 *Eff. October 1, 1992;*

12 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0167

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 6, how is this approval sought and upon what basis it is granted or denied?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0167 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0167 DELIVERY WINDOW OR SHELF**

4 A delivery window or a non-corrosive shelf shall be provided between the picking room and packing room or area.
5 The delivery window shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other
6 material approved by the Division of Marine Fisheries and sloped to drain towards the picking room.

7
8 *History Note:* Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

9 *Eff. October 1, 1992;*

10 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0169

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, I take it "code date" means the term as defined in Rule 18A .0134(2)?

In (c), line 6, what is an "accurate, operating thermometer"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0169 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0169 FREEZING**

4 (a) If crustacea or crustacea meat is to be frozen, the code date shall be followed by the letter "F."

5 (b) Frozen crustacea or crustacea meat shall be stored at a temperature of 0° F (-18° C) or less.

6 (c) The frozen storage rooms shall be equipped with an accurate, operating thermometer.

7
8 *History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.*

9 *Eff. October 1, 1992;*

10 *Amended Eff. August 1, 2002; April 1, 1997;*

11 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0170 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0170 SHIPPING**

4 Cooked crustacea and crustacea meat shall be shipped between 33° F (0.5° C) and 40° F (4.4° C). Frozen crustacea
5 products shall be shipped at 0° F (-18° C) or below.

6
7 *History Note: Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52.*

8 *Eff. October 1, 1992;*

9 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0171 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0171 WHOLE CRUSTACEA OR CRUSTACEA PRODUCTS**

4 Whole crustacea, ~~claws-claws,~~ or any other crustacea products shall be prepared, ~~packaged-packaged,~~ and labeled in
5 accordance with the rules of this Section.

6
7 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

8 *Eff. October 1, 1992;*

9 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0172

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, what is "tightly constructed"?

On line 5, what is "clean" in this context?

In (c), line 8, upon what basis is the approval granted or denied? Is the approval based upon meeting the requirements of this Rule? Is there an inspection involved?

In (d), line 9, what is the difference between "cleaned" and "sanitized"? For "sanitize" are you referring to the definition in 18A .0134(24)?

And on line 10, upon what basis is this approval granted or denied?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0172 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0172 COOKED CLAW SHIPPING CONDITIONS**

4 (a) Vehicles used to transport cooked claws shall be mechanically refrigerated, enclosed, tightly constructed, kept
5 ~~clean~~ clean, and equipped with an operating thermometer.

6 (b) Cooked crab claws shall be stored and transported between 33° F (0.5° C) and 40° F (4.4° C) ambient air
7 temperature.

8 (c) All vehicles shall be approved by the Division of Marine Fisheries prior to use.

9 (d) Cooked claw shipping containers shall be marked for intended use, ~~cleaned~~ cleaned, and sanitized prior to use and
10 approved by the Division.

11
12 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

13 *Eff. October 1, 1992;*

14 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0179 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0179 RECALL PROCEDURE**

4 Each owner of a cooked crustacea or crustacea meat facility or repacker facility shall keep on file a written product
5 recall procedure. A copy of this recall procedure shall be provided to the ~~Division.~~Division of Marine Fisheries.

6
7 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

8 *Eff. October 1, 1992;*

9 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0180

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, what do you mean by "examined"? Is this the same as "testing" as referred to in the name of the Rule?

What authority are you relying upon to demand samples of the meat from stores and restaurants? G.S. 113-221.2 refers to the Commission's ability to establish sanitation requirements for the harvesting, processing, and handling of crustacea. Are you interpreting "handling" to include the sale of it?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0180 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0180 SAMPLING AND TESTING**

4 Samples of cooked crustacea or crustacea meat may be taken and examined by the Division of Marine Fisheries at
5 any time or place. Samples of cooked crustacea or crustacea meat shall be furnished by the owner or operator of
6 facilities, trucks, carriers, stores, ~~restaurants~~ restaurants, and other places where cooked crustacea or crustacea meat
7 are sold.

8
9 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*

10 *Eff. October 1, 1992;*

11 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0188

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, is the determination of what is "reasonably likely to occur" going to be made solely by the dealer? I ask because if the Division has hazards it wants included, then that needs to be set forth in this Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0188 is readopted as published in 35:07 NCR 773 as follows:

2
3 **15A NCAC 18A .0188 HAZARD ANALYSIS**

4 Each dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur
5 for each kind of crustacea or crustacea meat product processed by that dealer and to identify the preventative measures
6 that the dealer can apply to control those hazards.

7
8 *History Note:* Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

9 *Eff. August 1, 2000;*

10 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0189

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 5, why is "plan" capitalized?

On line 6, consider clarifying the language by stating, "reviewed at least annually and updated if necessary..."

And I take it you need to retain "at least" here?

On line 6, do you need "at a minimum:"?

In (1), line 7, who determines what is "reasonably likely to occur"?

In (2), I take it you are referring to "critical control points" as defined in Rule 18A .0134(4)?

Similarly in (3), I take it you are referring to "critical limits" as the term is defined in Rule 18A .0134(5)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0189 is readopted with changes as published in 35:07 NCR 773-774 as follows:

2
3 **15A NCAC 18A .0189 HACCP PLAN**

4 Each dealer shall have and implement a written HACCP [~~Hazard Analysis and Critical Control Points (HACCP)~~]
5 Plan. The owner or authorized designee shall sign the plan when implemented and after any modification. The plan
6 shall be reviewed and updated, if necessary, at least annually. The plan shall, at a minimum:

- 7 (1) ~~List-list~~ the food safety hazards that are reasonably likely to occur;
8 (2) ~~List-list~~ the critical control points for each of the food safety hazards;
9 (3) ~~List-list~~ the critical limits that must be met for each of the critical control points;
10 (4) ~~List-list~~ the procedures, and frequency thereof, that will be used to monitor each of the critical
11 control points to ensure compliance with the critical limits;
12 (5) ~~List-list~~ any corrective action plans to be followed in response to deviations from critical limits at
13 critical control points;
14 (6) ~~Provide-provide~~ a record keeping system that documents critical control point monitoring; and
15 (7) ~~List-list~~ the verification procedures, and frequency thereof, that the dealer will use.

16
17 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*
18 *Eff. August 1, 2000;*
19 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0190

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, do you need to retain "at a minimum"?

In (1), line 5, what do you mean by "safety of water"? Does your regulated public know?

In (2), line 6, what does "condition and cleanliness" mean here?

In (6), line 11, what does "proper labeling" mean?

In (7), line 12, what do you mean by "control" and "adverse health conditions"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0190 is readopted as published in 35:07 NCR 774 as follows:

2
3 **15A NCAC 18A .0190 SANITATION MONITORING REQUIREMENTS**

4 Each dealer shall monitor, at a minimum, the following sanitation items:

- 5 (1) ~~Safety~~safety of water;
- 6 (2) ~~Condition~~condition and cleanliness of food contact surfaces;
- 7 (3) ~~Prevention~~prevention of cross contamination;
- 8 (4) ~~Maintenance~~maintenance of hand washing, hand ~~sanitizing~~sanitizing, and toilet facilities;
- 9 (5) ~~Protection~~protection of crustacea or crustacea meat, crustacea or crustacea meat packaging
- 10 ~~materials~~materials, and food contact surfaces from adulteration;
- 11 (6) ~~Proper~~proper labeling, ~~storage~~storage, and use of toxic compounds;
- 12 (7) ~~Control~~control of employees with adverse health conditions; and
- 13 (8) ~~Exclusion~~exclusion of pests from the facility.

14
15 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~*
16 *Eff. August 1, 2000;*
17 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0431

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 8, you state that State funds are affected. Prior to this Rule, no rules have State funds affected; after this Rule, all forms refer to State funds. I certainly understand that changes to the Rules can affect State funds, but since this is a repeal, I wanted to check – did you intend to mark that State funds are affected?

Please note this inquiry applies to Rules 18A .0908 and .0910, as well.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0431 is repealed through readoption as published in 35:07 NCR 774 as follows:

2
3 **15A NCAC 18A .0431 STANDARDS FOR AN APPROVED SHELLFISH GROWING AREA**

4
5 *History Note: Authority G.S. 130A-230;*
6 *Eff. February 1, 1987;*
7 *Repealed Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0704

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 5, "found" by whom? If the idea is to state "conforming or provisionally conforming... as determined by a Food and Drug Administration... Officer or by an FDA-certified..." then state that. If it's "found" by someone or something else, please state what.

On line 7, I believe "FDA-certified" should be hyphenated.

On line 8, just so I'm clear – the FDA will certify individuals as a "State Shellfish Laboratory Evaluation Officer"?

In (b), please incorporate these sources by reference, as required by G.S. 150B-21.6.

On line 16, approved by whom? How?

On line 18, what does "validated" mean here?

On line 19, what are "immediate or ongoing critical need[s]"? Who determines this?

In (b)(1), line 21, what does "validated" mean in this context?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0704 is readopted with changes as published in 35:07 NCR 774-775 as follows:

2
3 **15A NCAC 18A .0704 LABORATORY PROCEDURES**

4 ~~(a) The laboratory and the laboratory operator shall be approved by the Division. All laboratory analyses used to~~
5 ~~evaluate the effectiveness of the depuration process shall be performed by a laboratory found to conform or~~
6 ~~provisionally conform to the requirements established under the National Shellfish Sanitation Program (NSSP), as~~
7 ~~determined by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA certified~~
8 ~~State Shellfish Laboratory Evaluation Officer.~~

9 ~~(b) The laboratory shall conduct routine bacterial examinations of process water and shellfish, and special~~
10 ~~examinations when necessary or required in accordance with Rule .0706 of this Subchapter.~~

11 ~~(c)(b) Bacterial examinations of shellfish and sea water shall be made in accordance with "Recommended Procedures~~
12 ~~for Examination of Sea Water and Shellfish", American Public Health Association, Inc., which is adopted by reference~~
13 ~~in accordance with G.S. 150B-14(e), or other methods approved by the Division. A copy of this publication is~~
14 ~~available for inspection at the Shellfish Sanitation Office, Marine Fisheries Building, Arendell Street, Morehead City,~~
15 ~~North Carolina 28557. All methods for the analysis of depuration process water and shellfish that are used to evaluate~~
16 ~~the effectiveness of the depuration process shall be cited in the latest approved edition of the NSSP Guide for the~~
17 ~~Control of Molluscan Shellfish, Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests or~~
18 ~~validated for use by the NSSP under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation~~
19 ~~Conference. If there is an immediate or ongoing critical need for a method and no method approved for use within the~~
20 ~~NSSP exists, the following may be used:~~

21 ~~(1) a validated Association of Analytical Communities, Bacteriological Analysis Manual, or~~
22 ~~Environmental Protection Agency method; or~~

23 ~~(2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the~~
24 ~~Control of Molluscan Shellfish.~~

25 ~~(c) The laboratory shall conduct examinations of depuration process water and shellfish and conduct special~~
26 ~~examinations if necessary or required, in accordance with Rules [.0706-.0709].0706 through .0709 of this Section.~~

27 ~~(d) All other physical, chemical, or biological tests shall be conducted according to "Standard Methods for the~~
28 ~~Examination of Water and Waste Water", prepared and published by American Public Health Association, American~~
29 ~~Water Works Association, and Water Pollution Control Federation, which is adopted by reference in accordance with~~
30 ~~G.S. 150B-14(e), or other methods approved by the Division. A copy of this publication is available for inspection at~~
31 ~~the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.~~

32
33 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
34 *Eff. February 1, 1987;*
35 *Amended Eff. September 1, 1991; September 1, 1990;*
36 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0901

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1), line 5, "determined suitable" by whom?

On line 6, what is a "direct market"? Does your regulated public know?

In (2), line 7, please insert a comma after "tributaries"

In (3), who will conduct the sampling to make the estimate?

In (5), line 14, what is "predictable intermittent pollution"? Predictable by whom?

On line 15, what is the "management plan" here? Is this what is addressed by Rule .0905?

In (10), line 32, do you need "etc."? Could you say, "(such as dock, basin, floating deck)"?

In (14), Page 2, line 5, I take it that "state" refers to any state and not just NC? If so, it's fine as written. If "state" does mean NC here, please capitalize the term.

On line 6, who determines "adequate"? If this is a description of the program, then why do you need it here?

On line 7, what is "safe and sanitary"?

In (18), line 13, what is "immediately" here? Is it known to you regulated public?

In (19), line 19, what is "suitable and effective"?

Also on line 19, since you are proposing to delete the definition of the term, will your regulated public know what "relaying" is? (Please note, I do not have a similar concern for depuration, as that term does not have multiple meanings.)

In (20), line 21, please insert a comma after "tides"

In (21), line 23. Please state "Shellfish" means the term as defined in..."

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

On line 24, I do not see this term defined or used in that statute. Did you mean to refer to G.S. 113-201.1?

In (22), line 26, I take it the term "management unit" is known to your regulated public?

In (25), who conducts this survey? Is it the Division in carrying out Rules .0903 and .0904?

In (26), Page 3, line 1, who determines whether this is "sufficiently" far in advance?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0901 is readopted with changes as published in 35:07 NCR 775-776as follows:

3 **15A NCAC 18A .0901 DEFINITIONS**

4 The following definitions shall apply throughout to this Section.

- 5 (1) ~~"Approved area"~~ "Approved" means ~~an area shellfish growing waters~~ determined suitable for the
6 harvesting of shellfish for direct market purposes.
- 7 (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries or any other area
8 with restricted tidal flow.
- 9 (3) ~~"Colony forming unit"~~ "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as
10 determined by a plate count.
- 11 (3)(4) ~~"Commercial marina"~~ means ~~marinas~~ a marina that ~~offer~~ offers one or more of the following
12 services: fuel, transient dockage, haul-out facilities, or repair services.
- 13 (4)(5) ~~"Conditionally approved area"~~ "approved" means ~~an area shellfish growing waters that are~~ subject to
14 predictable intermittent pollution but that may be used for harvesting shellfish for direct market
15 purposes when management plan criteria are met.
- 16 (5) ~~"Depuration"~~ means ~~mechanical purification or the removal of adulteration from live shellstock by~~
17 ~~any artificially controlled method.~~
- 18 (6) "Division" means the Division of ~~Environmental Health~~ Marine Fisheries or its authorized agent.
- 19 (7) "Estimated 90th percentile" means a statistic that measures the variability in a sample set that shall
20 be calculated by:
21 (a) calculating the arithmetic mean and standard deviation of the sample result logarithms
22 (base 10);
23 (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
24 (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
25 (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the
26 estimated 90th percentile.
- 27 (7)(8) ~~"Fecal coliform"~~ means bacteria of the coliform group ~~which that~~ will produce gas from lactose in
28 a multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5°C
29 plus or minus 0.2°C in a water bath.
- 30 (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- 31 (8) ~~"Growing waters"~~ means ~~waters which support or could support shellfish life.~~
- 32 (9)(10) "Marina" means any water area with a structure (dock, basin, floating dock, etc.) which that is
33 utilized for docking or otherwise mooring vessels and constructed to provide temporary or
34 permanent docking space for more than 10 boats.
- 35 (10)(11) ~~"Marine biotoxins" means a poisonous substance accumulated by shellfish feeding upon~~
36 ~~dinoflagellates containing toxins.~~ any poisonous compound produced by marine microorganisms and
37 accumulated by shellstock.

- (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the two middle numbers when the sequence has an even number of numbers.
- ~~(11)~~(13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit volume and is determined from the number of positive results in a series of fermentation tubes.
- (14) "National Shellfish Sanitation Program (NSSP)" means the cooperative federal-state-industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of Molluscan Shellfish will be safe and sanitary.
- ~~(12)~~(15) "Open-system marina" means a marina constructed in an area where tidal currents have not been impeded by natural or man-made barriers.
- ~~(13)~~(16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- ~~(14)~~(17) "Prohibited area" "Prohibited" means an area shellfish growing waters unsuitable for the harvesting of shellfish for direct market purposes.
- ~~(15)~~(18) "Public health emergency" means any condition that may immediately cause shellfish waters to be unsafe for the harvest of shellfish for human consumption.
- ~~(16)~~ "Relaying" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.
- ~~(17)~~(19) "Restricted area" "Restricted" means an area shellfish growing waters from which shellfish may be harvested only by permit and are subjected to an approved depuration process or relayed to an approved area a suitable and effective treatment process through relaying or depuration.
- ~~(18)~~(20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- ~~(19)~~(21) "Shellfish" means oysters, mussels, scallops and all varieties of clams. However "shellfish" as defined in [General Statute] G.S. 113-229, except the term shall not include scallops when the final product is the shucked adductor muscle only.
- (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey and that is used to track the location where shellfish are harvested.
- (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish life.
- (24) "Shellstock" means live molluscan shellfish in the shell.
- ~~(20)~~(25) "Shoreline survey" means a visual inspection of the environmental factors that affect the sanitary quality of a growing area and identifies sources of pollution when possible. an in-field inspection to identify and evaluate any potential or actual pollution sources or other environmental factors that may impact the sanitary quality of a shellfish growing area.
- (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution

1 and scheduled sufficiently far in advance to support random collection with respect to environmental
2 conditions.

3
4 *History Note:* *Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 143B-289.52;*
5 *Eff. June 1, 1989;*
6 *Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;*
7 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0902 is readopted as published in 35:07 NCR 776 as follows:

2
3 **15A NCAC 18A .0902 CLASSIFICATION OF SHELLFISH GROWING WATERS**

4 (a) All ~~actual and potential~~ shellfish growing ~~areas~~ waters shall be classified by the Division of Marine Fisheries as
5 to their suitability for shellfish harvesting. ~~Growing~~ Shellfish growing waters shall be designated with one of the
6 following classifications:

7 (1) ~~Approved area~~ approved;

8 (2) ~~Conditionally approved area~~ conditionally approved;

9 (3) ~~Restricted area~~ restricted; or

10 (4) ~~Prohibited area~~ prohibited.

11 (b) Maps showing the ~~boundaries and~~ classification of shellfish growing areas ~~waters~~ shall be maintained by the
12 Division.

13
14 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52~~;*

15 *Eff. June 1, 1989;*

16 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0903

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, should this read “shellfish growing areas” to be consistent with the term as used throughout the Rule and as defined?

In (c)(3), how is “necessary to effectively evaluate” defined?

In (d), line 23, so that I’m clear – the Rule isn’t requiring all sanitary survey reports to be in writing, only those that are upgrading the classification? I ask because I’d assumed all reports prepared under Paragraph (c) would be written, but then (d) refers specifically to the requirement for a written survey.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0903 is readopted as published in 35:07 NCR 776-777 as follows:

2
3 **15A NCAC 18A .0903 SANITARY SURVEY**

4 (a) ~~Growing-Shellfish growing~~ waters shall be divided into growing areas by the ~~Division~~Division of Marine
5 Fisheries. Maps showing the boundaries of these shellfish growing areas shall be maintained by the Division and can
6 be found at: <http://portal.ncdenr.org/web/mf/shellfish-closure-maps>.

7 (b) Except in shellfish growing areas where all shellfish growing waters are classified as prohibited, the Division shall
8 complete a sanitary survey report shall be conducted for each shellfish growing area at least once every three years
9 years, except growing areas that are totally prohibited, and

10 (c) A sanitary survey report shall include the following:

11 (1) ~~A a shoreline survey, survey to evaluate pollution sources that may affect the area.~~

12 (2) ~~A hydrographic survey to evaluate meteorological and hydrographic an evaluation of~~
13 meteorological, hydrodynamic, and geographic factors that may affect distribution of pollutants.

14 (3) a bacteriological-microbiological survey to assess water quality. A bacteriological-microbiological
15 survey shall include the collection of growing-area water samples and their analysis for fecal
16 coliforms. The number and location of sampling stations shall be selected to produce the data
17 necessary to effectively evaluate all point and non-point pollution sources. sources identified during
18 the shoreline survey. A minimum of 15 six samples shall be collected annually from each designated
19 sampling station. sets of samples shall be collected from growing areas during the three year
20 evaluation period. Areas without a shoreline may be sampled less frequently.

21 (4) a determination of the appropriate classification for all shellfish growing waters within the shellfish
22 growing area in accordance with Rule .0902 of this Section.

23 (d) A written sanitary survey report shall be required to designate any portion of a shellfish growing area with a
24 classification other than prohibited, or for a reclassification from:

25 (1) prohibited to any other classification;

26 (2) restricted to conditionally approved or approved; or

27 (3) conditionally approved to approved.

28 All other reclassifications may be made without a sanitary survey.

29 (e) In each calendar year that a shellfish growing area is not evaluated with a sanitary survey, a written annual
30 evaluation report shall be completed by the Division and shall include the following:

31 (1) a microbiological survey to assess water quality as set forth in Subparagraph (c)(3) of this Rule.

32 (2) an evaluation of changes in pollution source impacts that may affect the classifications of the
33 shellfish growing area.

34 If the annual evaluation determines conditions have changed and a classification for shellfish growing waters is
35 incorrect, the Division shall initiate action to reclassify the shellfish growing waters in accordance with Rule .0902 of
36 this Section.

37 (e) ~~Sanitary survey reports shall be prepared every three years.~~

1 ~~(d)(f)~~ ~~All sanitary~~ Sanitary survey reports and annual evaluation reports shall be maintained by the Division.

2

3 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*

4 *Eff. June 1, 1989;*

5 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0904

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (1), line 8, what are "significant point sources of pollution"? Does your regulated public know? I know this term is used in other rules within 15A, so I am guessing so, but I wanted to check.

In (2), line 10, what are "deleterious substances"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0904 is readopted as published in 35:07 NCR 777 as follows:

2
3 **15A NCAC 18A .0904 APPROVED AREAS WATERS**

4 ~~An area Shellfish growing waters~~ classified as approved for shellfish harvesting ~~for direct market purposes, must~~
5 ~~satisfy shall meet~~ the following criteria as indicated by a sanitary ~~survey; survey~~, as set forth in Rule .0903 of this

6 Section:

- 7 (1) the shoreline survey ~~has indicated that there is no significant point source contamination; indicates~~
8 there are no significant point sources of pollution;
9 (2) the area is not contaminated with fecal material, pathogenic microorganisms, poisonous ~~and or~~
10 deleterious substances, or marine biotoxins that may render consumption of the shellfish hazardous;
11 and
12 ~~(3) the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN of water~~
13 ~~shall not exceed 14 per 100 milliliters, and not more than ten percent of the samples shall exceed a~~
14 ~~fecal coliform MPN of 43 per 100 milliliters (per five tube decimal dilution) in those portions of~~
15 ~~areas most probably exposed to fecal contamination during adverse pollution conditions.~~
16 (3) the microbiological survey, as set forth in Rule .0903 (b)(3) of this Section, indicates the
17 bacteriological water quality does not exceed the following standards based on results generated
18 using the systematic random sampling strategy:
19 (a) a median fecal coliform most probable number (MPN) or geometric mean MPN of 14 per
20 100 milliliters;
21 (b) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 14 per 100
22 milliliters;
23 (c) an estimated 90th percentile of 43 MPN per 100 milliliters for a five-tube decimal dilution
24 test; or
25 (d) an estimated 90th percentile of 31 CFU per 100 milliliters for a membrane filter membrane-
26 Thermotolerant Escherichia coli (mTEC) test.

27
28 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
29 *Eff. June 1, 1989;*
30 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0905

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, do you mean "shall" instead of "may"? If not, then would waters meeting these standards not be classified as "conditionally approved"?

In (a)(2), line 11, what are "known and predictable" here? To whom?

In (b), line 18, what is "immediately" here? Does your regulated public know?

In (c)(2), line 27, who are these persons?

In (c)(4), line 30, what are "critical pollution sources"? Does your regulated public know?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0905 is readopted with changes as published in 35:07 NCR 777 as follows:

2
3 **15A NCAC 18A .0905 CONDITIONALLY APPROVED AREAS-WATERS**

4 (a) ~~An area~~ Shellfish growing waters may be classified as conditionally approved if the Division of Marine Fisheries
5 determines the following:

6 (1) the sanitary survey indicates the ~~area~~ shellfish growing waters will not meet the approved area
7 waters classification criteria as set forth in Rule .0904 of this Section under all conditions, for a
8 reasonable period of time and the factors determining these periods are known and predictable but
9 will meet those criteria under certain conditions;

10 (2) the conditions when the shellfish growing waters will meet the approved waters classification
11 criteria are known and predictable;

12 (3) the public bottom within those shellfish growing waters support a population of harvestable
13 shellfish; and

14 (4) staff are available to carry out the requirements defined in the management plan, as set forth in
15 Paragraph (b) of this Rule.

16 (b) A written management plan shall be developed by the Division for conditionally approved areas. This plan shall
17 define the conditions under which the shellfish growing waters may be open to the harvest of shellfish. If the conditions
18 defined in the management plan are not met, the Division shall immediately close the shellfish growing waters to
19 shellfish harvesting.

20 ~~(c) When management plan criteria are met the Division may recommend to the Division of Marine Fisheries the area~~
21 ~~may be opened to shellfish harvesting on a temporary basis.~~

22 ~~(d) When management plan criteria are no longer met or public health appears to be jeopardized, the Division will~~
23 ~~recommend to the Division of Marine Fisheries immediate closure of the area to shellfish harvesting.~~

24 (c) All conditionally approved growing waters shall be re-evaluated on an annual basis. A written report summarizing
25 this re-evaluation shall be produced and shall include the following:

26 (1) an evaluation of compliance with management plan criteria;

27 (2) a review of the cooperation of all persons involved;

28 (3) an evaluation of bacteriological water quality in the growing waters with respect to the standards
29 for the classification; and

30 (4) an evaluation of critical pollution sources.

31
32 *History Note:* Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~

33 Eff. June 1, 1989;

34 Readopted Eff. May 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0906

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, do you mean "shall" instead of "may"?

Consider ending (a)(1) with a semicolon and "and", assuming you intend to require both.

In (a)(1), line 7, what are "significant point sources of pollution" here? Does your regulated public know?

In (d), there appears to be a word missing. Should line 15 state "... Section, shall indicate the bacteriological..."?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0906 is readopted with changes as published in 35:07 NCR 777-778 as follows:

2
3 **15A NCAC 18A .0906 RESTRICTED AREAS**

4 (a) ~~An area Shellfish growing waters may be classified as restricted-restricted if: when a sanitary survey indicates a~~
5 ~~limited degree of pollution and the area is not contaminated to the extent that indicates that consumption of shellfish~~
6 ~~could be hazardous after controlled depuration or relaying.~~

7 (1) a sanitary survey indicates there are no significant point sources of pollution.

8 (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels
9 that shellstock can be made safe for human consumption by either relaying or depuration.

10 (b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and
11 15A NCAC 18A, 18A .0300, Rules Governing the Sanitation of Shellfish.

12 (c) Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and
13 15A NCAC 18A, 18A .0300 and .0700, Rules Governing the Sanitation of Shellfish.

14 (d) For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the
15 microbiological survey, as set forth in Rule ~~[-0903-(b)(3)-] 0903(b)(3)~~ of this Section, indicates the bacteriological
16 water quality does not exceed the following standards based on results generated using the systematic random
17 sampling strategy:

18 (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100
19 milliliters;

20 (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100
21 milliliters;

22 (3) an estimated 90th percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or

23 (4) an estimated 90th percentile of 163 CFU per 100 milliliters for a membrane filter membrane-
24 Thermotolerant Escherichia coli (mTEC) test.

25
26 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
27 *Eff. June 1, 1989;*
28 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0907

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (2)(a), lines 11-12, what are "other point source outfall" and "public health significance"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0907 is readopted as published in 35:07 NCR 778 as follows:

2
3 **15A NCAC 18A .0907 PROHIBITED AREAS WATERS**

4 ~~A growing area shall be classified prohibited if there is no current sanitary survey or if the sanitary survey or other~~
5 ~~monitoring program data indicate that the area does not meet the criteria as specified in approved, conditionally~~
6 ~~approved or restricted classifications. The taking of shellfish for any human food purposes from such areas shall be~~
7 ~~prohibited.~~

8 Shellfish growing waters shall be classified as prohibited if:

9 (1) no current sanitary survey, as set forth in Rule .0903 of this Section, exists for the growing area; or

10 (2) the sanitary survey determines:

11 (a) the shellfish growing waters are adjacent to a sewage treatment plant outfall or other point
12 source outfall with public health significance.

13 (b) the shellfish growing waters are contaminated with fecal material, pathogenic
14 microorganisms, poisonous or deleterious substances, or marine biotoxins that render
15 consumption of shellfish from those growing waters hazardous.

16
17 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*

18 *Eff. June 1, 1989;*

19 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0908 is repealed through readoption as published in 35:07 NCR 778 as follows:

2

3 **15A NCAC 18A .0908 UNSURVEYED AREAS**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. June 1, 1989;*

7 *Repealed Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0909

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

I recommend ending (a)(1) with a semicolon and "and" assuming you mean both. This will be consistent with prior rules.

In (a)(2), line 7, what are "outfalls"? What are "point source outfalls"?

On lines 7 and 8, what is "public health significance"?

Also, please incorporate this document by reference pursuant to G.S. 150B-21.6 if you have not already done so.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 18A .0909 is readopted as published in 35:07 NCR 778 as follows:

2
3 **15A NCAC 18A .0909 BUFFER ZONEZONES**

4 ~~A prohibited area shall be established as a buffer zone around each wastewater treatment plant outfall.~~

5 (a) The Division of Marine Fisheries shall establish a buffer zone around the following:

6 (1) marinas, in accordance with Rule .0911 of this Section.

7 (2) wastewater treatment plant outfalls or other point source outfalls determined to be of public health
8 significance, in accordance with the latest approved edition of the National Shellfish Sanitation
9 Program Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance, Chapter IV:
10 Shellstock Growing Areas.

11 (b) Buffer zones shall be classified as prohibited.

12
13 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*

14 *Eff. June 1, 1989;*

15 *Readopted Eff. May 1, 2021.*

1 15A NCAC 18A .0910 is repealed through readoption as published in 35:07 NCR 778 as follows:

2

3 **15A NCAC 18A .0910 RECLASSIFICATION**

4

5 *History Note: Authority G.S. 130A-230;*

6 *Eff. June 1, 1989;*

7 *Repealed Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0913

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 5, what is "immediately" here? Who determines "potentially"?

In (b), line 7, do you mean "shall" instead of "may"?

On line 8, do you need "sufficient" here? Wouldn't "have had time to purify..." suffice?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0913 is readopted with changes as published in 35:07 NCR 778 as follows:

2
3 **15A NCAC 18A .0913 PUBLIC HEALTH EMERGENCY**

4 (a) The Division **of Marine Fisheries** shall ~~recommend to the Division of Marine Fisheries immediate closure of~~
5 immediately close any potentially impacted shellfish growing waters to the harvesting of shellfish in the event of a
6 public health emergency.

7 (b) The Division ~~shall recommend to the Division of Marine Fisheries re-opening may re-open~~ shellfish growing
8 waters ~~when if~~ the condition causing the public health emergency no longer exists and shellfish have had sufficient
9 time to purify naturally from possible contamination.

10
11 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*

12 *Eff. June 1, 1989;*

13 *Readopted Eff. May 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0914

DEADLINE FOR RECEIPT: Friday, April 9, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 9, "found" by whom? If the idea is to state "conforming or provisionally conforming... as determined by a Food and Drug Administration... Officer or by an FDA-certified..." then state that. If it's "found" by someone or something else, please state what.

On line 12, I believe "FDA-certified" should be hyphenated.

Also on line 12, just so I'm clear – the FDA will certify individuals as a "State Shellfish Laboratory Evaluation Officer"?

In (b), please incorporate these sources by reference, as required by G.S. 150B-21.6 if you have not done so elsewhere.

On line 14, approved by whom? How?

On line 15, what does "validated" mean here?

On line 17, what are "immediate or ongoing critical need[s]"? Who determines this?

In (b)(1), line 21, what does "validated" mean in this context?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 30, 2021

1 15A NCAC 18A .0914 is readopted as published in 35:07 NCR 778-779 as follows:

2
3 **15A NCAC 18A .0914 LABORATORY PROCEDURES**

4 ~~All laboratory examinations for water and shellfish used for the evaluation of growing areas shall be made in~~
5 ~~accordance with the latest approved edition by the Food and Drug Administration of "Recommended Procedures for~~
6 ~~Examination of Sea Water and Shellfish", American Public Health Association, Inc., which is adopted by reference~~
7 ~~in accordance with G.S. 150B-14(c). A copy of this publication is available for inspection at the Shellfish Sanitation~~
8 ~~Office, Marine Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.~~

9 (a) All laboratory analyses used for the evaluation of shellfish growing areas shall be performed by a laboratory found
10 to conform or provisionally conform to the requirements established under the National Shellfish Sanitation Program
11 (NSSP), as determined by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an
12 FDA certified State Shellfish Laboratory Evaluation Officer.

13 (b) All methods for the analysis of shellfish and shellfish growing waters that are used for the evaluation of shellfish
14 growing areas shall be cited in the latest approved edition of the NSSP Guide for the Control of Molluscan Shellfish,
15 Section IV: Guidance Documents, subsection Approved NSSP Laboratory Tests or validated for use by the NSSP
16 under the Constitution, Bylaws and Procedures of the Interstate Shellfish Sanitation Conference. If there is an
17 immediate or ongoing critical need for a method and no method approved for use within the NSSP exists, the following
18 may be used:

- 19 (1) a validated Association of Analytical Communities, Bacteriological Analysis Manual, or
20 Environmental Protection Agency method; or
21 (2) an Emergency Use Method as set forth in the latest approved edition of the NSSP Guide for the
22 Control of Molluscan Shellfish.

23
24 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
25 *Eff. June 1, 1989;*
26 *Amended Eff. September 1, 1991; September 1, 1990;*
27 *Readopted Eff. May 1, 2021.*