



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

June 15, 2023

North Carolina Marine Fisheries Commission  
Jennifer Everett, Rulemaking Coordinator  
217 West Jones Street, Raleigh, North Carolina 27603  
**Sent via email only to: Jennifer.Everett@ncdenr.gov**

Re: Extension of the Period of Review for 15A NCAC 02D .0103, .0501, .0546, .0605, .1903, .1904, .1905, .2203; 02Q .0104, .0105, .0206, .0304, .0305, .0307, .0505, .0507, .0508, .0710

Dear Ms. Everett:

At its June meeting today, the Rules Review Commission objected to 15A NCAC 03M .0101 in accordance with G.S. 150B-21.10. Specifically, the Commission adopted the opinion of counsel attached hereto and incorporated by reference.

Please respond to these objections in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Rules Review Commission's actions, please let me know.

Sincerely,

Lawrence R. Duke  
Commission Counsel

Cc: Catherine Blum  
Phillip Reynolds  
Attachment: Staff Opinion

**Donald R. van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

## RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: MARINE FISHERIES COMMISSION

RULE CITATION: 15A NCAC 03M .0101

RECOMMENDED ACTION: Object, based on:

Unclear or ambiguous - G.S. 150B-21.9(a)(2)

### COMMENT:

The Marine Fisheries Commission has submitted an amendment to an existing permanent rule that was readopted effective April 1, 2019. The Rule regulates the possession of any species of finfish, in joint or coastal waters, that is subject to certain limits set by either Marine Fisheries or by the NC Wildlife Resources Commission. The ambiguity for which this Rule should be objected to is not necessarily in the language of the Rule, but in the structure of the Marine Fisheries / Wildlife Resources joint jurisdiction over joint waters.

In Marine Fisheries' rules, 15A NCAC 03Q .0106 states that Marine Fisheries' regulations shall apply to joint waters, except that Wildlife Resources rules shall apply to joint waters as far as the regulation of "inland game fishes", "inland fishing license requirements for hook and line fishing", and "hook and line fishing". In discussions with Marine Fisheries' representative at the Attorney General's office, Marine Fisheries first agreed to add language to the Rule at issue that would clarify that the rule applied only to coastal and joint waters, as the Agency only has regulatory oversight in these waters. Next, Marine Fisheries agreed to add "or in a rule of the Wildlife Resources Commission for inland game fish", which partially brought this Rule into agreement with 03Q .0106, but Marine Fisheries would not add "or for finfish taken or used as bait for hook and line fishing in joint waters." This creates an internal ambiguity and causes it to conflict with 03Q .0106, as well as with other Wildlife Resources' rules.

Lawrence R. Duke  
Commission Counsel  
Issued June 14, 2023

The problem is that in joint waters, both Marine Fisheries and Wildlife Resources have regulatory jurisdiction and are statutorily required to be in agreement for rules that apply in joint waters. This has been an ongoing problem which neither agency has been able to resolve. While both agencies' rules do not allow possession of fish such as sturgeon or river herring, there are other species where the rules conflict. For instance, Wildlife Resources' rules do not allow for Hickory Shad to be used as cut bait, but Marine Fisheries' rules do. The same issues arise with the regulation of American Eel and Mullet.

While merely adding "or for finfish taken or used as bait for hook and line fishing in joint waters" does not completely resolve the issues between Marine Fisheries and Wildlife Resources in each's regulation of joint waters, it at least will clarify the Rule at issue sufficiently so that the regulated public can be aware which set of rules applies in which waters. Furthermore, the addition of this language will ensure that Marine Fisheries' 03Q .0106 and the Rule at issue here, 03M .0101, are coherent in allocating to Wildlife Resources the regulation of hook and line fishing in joint waters.

1 15A NCAC 03M .0101 is amended with changes as published in 37:07 NCR 541 as follows:

2  
3 **SUBCHAPTER 03M - FINFISH**

4  
5 **SECTION .0100 – FINFISH, GENERAL**

6  
7 **15A NCAC 03M .0101 MUTILATED FINFISH**

8 It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish in joint or coastal  
9 fishing waters that is subject to a ~~size or harvest restriction~~ possession limit, including size limit, recreational bag  
10 limit, commercial trip limit, or season, without having head and tail attached, ~~except~~ unless otherwise specified in a  
11 rule of the Marine Fisheries [Commission or] Commission, a proclamation issued pursuant to a rule of the Marine  
12 Fisheries [Commission.] Commission, or a rule of the Wildlife Resources Commission for inland game fish.

13 (1) ~~\_\_\_\_\_ mullet when used for bait;~~

14 (2) ~~\_\_\_\_\_ hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing~~  
15 ~~operation may be cut for bait at any one time; and~~

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

17  
18 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*

19 *Eff. January 1, 1991;*

20 *Amended Eff. January 1, 1991;*

21 *Temporary Amendment Eff. May 1, 2001;*

22 *Amended Eff. May 1, 2015; April 1, 2011; July 1, 2006; August 1, 2002;*

23 *Readopted Eff. April 1, 2019;*

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

**15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS**

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to joint fishing waters and shall be enforced by wildlife officers:

- (1) all laws and regulations pertaining to inland game fishes;
- (2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing;  
and
- (3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

*History Note: Authority G.S. 113-132; 113-134; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. July 1, 1999;  
Readopted Eff. September 1, 2022.*

**15A NCAC 10C .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS**

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to joint fishing waters and shall be enforced by wildlife officers:

- (1) all laws and regulations pertaining to inland game fishes;
- (2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing;  
and
- (3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

*History Note: Authority G.S. 113-132; 113-134; 113-271; 113-275; 113-182; 113-292; 113-333;  
Eff. January 1, 1977;  
Amended Eff. April 1, 1990; April 15, 1979;  
Readopted Eff. September 1, 2022.*