

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0301

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

I found the definition in item 19 confusing (p. 3 lines 2-4). If it is what you mean, consider if the something like the definition on the NSSP website would work, <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>. I.e. bracketing the existing definition and replacing with “means the federal/state cooperative program recognized by the U. S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.”

On p. 3, line 27, do you mean “each” or “every” employee? As opposed to any employee.

On p. 4, line 1, is “SELL BY” intentionally all caps?

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

Seth Ascher
Commission Counsel
Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0301 is readopted as published in 38:03 NCR 126-128 as follows:

2
3 **SECTION .0300 – SANITATION OF SHELLFISH - GENERAL**

4
5 **15A NCAC 18A .0301 DEFINITIONS**

6 The following definitions shall apply throughout Sections .0300 ~~to .0900~~ through .0800 of this Subchapter:

- 7 (1) "Adulterated" ~~means the following:~~ means:
- 8 (a) ~~Any any~~ shellfish that have been harvested from ~~prohibited areas;~~ polluted areas as defined
9 in 15A NCAC 03L .0101;
- 10 (b) ~~Any any~~ shellfish that have been shucked, packed, or otherwise processed in a plant ~~which~~
11 that has not been permitted by the Division of Marine Fisheries in accordance with these rules
12 or by another state shellfish control "authority" as defined in the National Shellfish Sanitation
13 Program (NSSP) Guide for the Control of Molluscan Shellfish, Section I: Purposes and
14 Definitions, in accordance with these Rules; This definition is incorporated by reference,
15 including subsequent amendments and editions. A copy of the reference material can be
16 found at [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
17 program-nssp, at no cost;
- 18 (c) any shellfish that may have been contaminated by flood waters in accordance with Rule .0405
19 of this Subchapter;
- 20 ~~(e)(d)~~ ~~Any any~~ shellfish ~~which that~~ exceed the ~~bacteriological~~ standards in Rule .0430 of this
21 Subchapter; and
- 22 ~~(d)(c)~~ ~~Any any~~ shellfish ~~which are that~~ have been deemed to be an imminent ~~hazard;~~ hazard.
- 23 (2) ~~"Approved area" means an area determined suitable for the harvest of shellfish for direct market~~
24 ~~purposes.~~
- 25 (3) ~~"Bulk shipment" means a shipment of loose shellstock.~~
- 26 (4) ~~"Buy boat or buy truck" means any boat which that~~ complies with Rule .0419 of this Subchapter or
27 truck which complies with Rule .0420 of this Subchapter that is used by a person permitted under these
28 Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.
- 29 ~~(5)(2)~~ "Certification number" means the unique identification number assigned by the state shellfish control
30 agency to each certified shellfish ~~dealer.~~ dealer for each location. It consists of a ~~one to five digit one-~~
31 ~~to-five-digit~~ number preceded by the ~~two letter~~ two-letter state abbreviation and followed by the ~~two~~
32 ~~letter symbol~~ two-letter abbreviation designating the type of operation certified.
- 33 (3) "Clean" means free from dirt, debris, dust, marks, stains, waste materials, litter, or foreign material.
- 34 ~~(6)(4)~~ "Critical control point" means a point, ~~step~~ step, or procedure in a food process at which control can
35 be applied, and a food safety hazard can as a result be prevented, ~~eliminated~~ eliminated, or reduced to
36 acceptable levels.

- 1 ~~(7)~~(5) "Critical limit" means the maximum or minimum value to which a physical, ~~biological~~ ~~biological~~, or
2 chemical parameter must be controlled at a critical control point to prevent, ~~eliminate~~ ~~eliminate~~, or
3 reduce to an acceptable level the occurrence of the identified food safety hazard.
- 4 ~~(8)~~(6) "Depurate" or "Depuration" "deputation" means ~~mechanical purification or the removal of adulteration~~
5 ~~from live shellstock by any artificially controlled means~~ the process of reducing the pathogenic
6 organisms that may be present in shellstock by using a controlled aquatic environment as the treatment
7 process.
- 8 ~~(9)~~(7) "Depuration facility" means ~~the physical structure wherein depuration is accomplished, including all~~
9 ~~the appurtenances necessary to the effective operation thereof~~ any establishment or place where the
10 depuration of shellfish occurs by a shellfish dealer.
- 11 ~~(10)~~(8) "Division" means the Division of ~~Environmental Health or its authorized agent~~ Marine Fisheries.
- 12 (9) "Easily cleanable" has the same meaning as defined in the 2017 U.S. Food Code. This definition is
13 incorporated by reference, not including subsequent amendments and editions. A copy of the
14 reference material can be found at <https://www.fda.gov/food/fda-food-code/food-code-2017>, at no
15 cost.
- 16 (10) "Food contact surface" means the parts of equipment, including auxiliary equipment, that may be in
17 contact with the food being processed, or that may drain into the portion of equipment with which
18 food is in contact.
- 19 (11) "Food safety hazard" means any biological, ~~chemical~~ ~~chemical~~, or physical property that may cause a
20 food to be unsafe for human consumption.
- 21 (12) "Good repair" means maintained to function as designed and without defect.
- 22 ~~(12)~~(13) "HACCP plan" means a written document that delineates the procedures a shellfish dealer follows to
23 implement food safety controls.
- 24 ~~(13)~~(14) "Hazard analysis critical control point (HACCP)" means a system of inspection, ~~control~~ ~~control~~, and
25 monitoring measures initiated by a shellfish dealer to identify microbiological, ~~chemical~~ ~~chemical~~, or
26 physical food safety hazards ~~which that~~ are likely to occur in shellfish products produced by the dealer.
- 27 ~~(14)~~(15) "Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish
28 meat from the shell.
- 29 ~~(15)~~(16) "Imminent hazard" means ~~a situation which is likely to cause an immediate threat to human life, and~~
30 ~~immediate threat of serious physical injury, an immediate threat of serious physical adverse health~~
31 ~~effects, or a serious risk of irreparable damage to the environment if no immediate action is taken~~ has
32 the same meaning as defined in G.S. 130A-2.
- 33 ~~(14)~~(17) "In-shell product" means non-living, processed shellfish with one or both shells present.
- 34 ~~(16)~~(18) "Misbranded" means ~~the following~~ as defined in G.S. 106-30 shall include any shellfish that are not
35 labeled in compliance with these rules.
- 36 (a) — Any shellfish which are not labeled with a valid identification number awarded by regulatory
37 authority of the state or territory of origin of the shellfish; or

(b) ~~Any shellfish which are not labeled as required by these Rules.~~

- (19) "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.
- (17) ~~"Operating season" means the season of the year during which a shellfish product is processed.~~
- (18) ~~"Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.~~
- (20) "Pests" means animals or insects, including dogs, cats, birds, rodents, flies, and larvae.
- (21) "Plant" means the establishment or place where shellfish processing occurs by shellfish dealers.
- (22) "Processing" or "processed" means any activity associated with the handling, shucking, freezing, packing, labeling, or storing of shellfish in preparation for distribution. This includes the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor.
- (19) ~~"Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.~~
- (20)(23) "Recall procedure" means the detailed procedure the ~~permitted-shellfish~~ dealer will use to retrieve product from the market when it is determined that the product ~~may not be safe for human consumption as determined by the State Health Director.~~ is adulterated or misbranded.
- (21) ~~"Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.~~
- (22)(24) "Repacking plant" means a ~~shipper,~~ the establishment or place where a shellfish dealer, other than the original shucker-packer, ~~who~~ repacks shucked shellfish into other containers for delivery to the consumer. ~~containers.~~
- (23)(25) "Reshipper" means a ~~shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers.~~ person that purchases shellfish from a shellfish dealer and sells the product without repacking or relabeling to another shellfish dealer, wholesaler, or retailer.
- (26) "Responsible individual" means the individual present at a shellfish dealer that is the supervisor at the time of the inspection. If no individual is the supervisor, then any employee is the responsible individual.
- (24) ~~"Sanitary survey" means the evaluation of factors having a bearing on 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.~~
- (25)(27) "Sanitize" means the a bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619, ~~has the same meaning as defined in 21 CFR 110.3,~~ which is incorporated by reference including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-110/subpart-A/section-110.3>, at no cost.

1 ~~(26)~~(28) "SELL BY date" means a date ~~conspicuously~~ placed on a container or tag by which a consumer is
2 informed of the latest date the product will remain suitable for sale.

3 ~~(27)~~(29) "Shellfish" means oysters, mussels, ~~scallops~~ scallops, and all varieties of ~~clams~~. However, ~~clams~~,
4 whether shucked or in the shell, fresh, frozen, whole, or in part. ~~the term~~ The requirements of Sections
5 .0300 through .0800 of this Subchapter shall not ~~include~~ apply to scallops ~~when~~ if the final product is
6 the shucked adductor muscle only.

7 (30) "Shellfish dealer" means a plant to which a Shellfish Dealer Permit and Certificate of Compliance is
8 issued by the Division for the activities of shellstock shipping, shucking or packing, repacking,
9 reshipping, or depuration.

10 ~~(28)~~(31) "Shellstock" means any live molluscan shellfish ~~which~~ that remain in their shells.

11 ~~(29)~~(32) "Shellstock conveyance" means all trucks, vessels, trailers, or other conveyances used to transport
12 shellstock.

13 (30) "~~Shellstock dealer~~" means a person who buys, sells, stores, or transports or causes to be transported
14 shellstock which was not obtained from a person permitted under these Rules.

15 ~~(31)~~(33) "Shellstock plant" means any establishment or place where shellstock are washed, packed, or
16 otherwise prepared for ~~sale~~ sale by a shellfish dealer.

17 ~~(32)~~(34) "Shucking and packing plant" means any establishment or place where shellfish are shucked and
18 packed for ~~sale~~ sale by a shellfish dealer.

19 (35) "Use" means employ, set, operate, or permit to be operated or employed.

20 ~~(33)~~(36) "Wet storage" means the ~~temporary placement~~ storage by a shellfish dealer of shellstock from
21 approved areas, a growing area in the open status and classified as "approved" or "conditionally
22 approved" as defined in Rule .0901 of this Subchapter, in containers or floats in natural bodies of ~~water~~
23 water, or in tanks containing natural or synthetic sea ~~water~~ water at any permitted land-based activity
24 or facility.

25
26 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;

27 Eff. February 1, 1987;

28 Amended Eff. August 1, 2000; August 1, 1998; February 1, 1997; January 4, 1994; September 1,
29 1990; December 1, ~~1987~~1987;

30 Readopted Eff. April 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0401

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

The material on lines 5 through 7 is a codifier note and is not up to the agency to delete. These notes are necessary to accommodate rule references in previously created documents. If you think the note is incorrect or no longer necessary, let the codifier know.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0401 is readopted as published in 38:03 NCR 129 as follows:
2

3 **SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS**
4

5 ~~Rules .0401—.0431 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A .0401—~~
6 ~~.0431); has been transferred and recodified from Rules .0901—.0931 of Title 10 Subchapter 10B of the North Carolina~~
7 ~~Administrative Code (T10.10B .0901—.0931), effective April 4, 1990.~~
8

9 **15A NCAC 18A .0401 APPLICABILITY OF RULES**

10 The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0302 of this
11 Subchapter, including shellfish dealers, shellstock plants, reshippers, shucking and packing plants, repacking plants,
12 deputation facilities, permittees with facilities approved for wet storage, and all other businesses and persons that buy,
13 sell, transport, or ship shellfish. These ~~Rules do~~ rules shall not apply to persons ~~individuals~~ possessing shellfish for
14 personal use.
15

16 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
17 *Eff. February 1, 1987;*
18 *Amended Eff. April 1, 1997; December 1, ~~1987-1987;~~*
19 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0402

DEADLINE FOR RECEIPT: January 26, 2024

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

On line 10, we recommend not using abbreviations in non-technical sections of rules. I.e. “[~~45°F~~] 45 degrees Fahrenheit”.

On line 30 for similar reasons, consider “accurate to [~~+/-°2F~~] within two degrees Fahrenheit”.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0402 is readopted as published in 38:03 NCR 129 as follows:

2
3 **15A NCAC 18A .0402 GENERAL REQUIREMENTS FOR OPERATION**

4 ~~(a) During the operating season the plant shall be used for no purpose other than the handling of shellfish. All unnecessary equipment and materials shall be removed from the plant and the floors kept clear for thorough cleaning.~~

5
6 ~~(b) (a) All floors, walls, shucking benches and stools, shucking blocks, tables, skimmers, blowers, colanders, buckets, or any other equipment or utensils used in the processing operation shall be cleaned and sanitized daily, or more frequently as may be necessary during the day's operation to prevent the introduction of undesirable microbiological organisms and filth into the shellfish product. Shellfish dealers shall provide mechanical refrigeration that is capable of maintaining an ambient temperature of 45°F or less and be sized to handle one day's production. The mechanical refrigeration shall include an automatic temperature regulating control and be equipped with an accurate, operating thermometer in the refrigerated storage area. If the sole means of refrigeration is a portable unit, that unit shall be capable of operating utilizing alternating current electrical power that will allow the unit to be plugged into a power supply during transport and at the certified facility.~~

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15 ~~(e) (b) Ceilings and windows shall also be kept clean. Refrigerators, refrigeration rooms, and ice boxes shall be washed and sanitized. Food contact surfaces shall be easily cleanable, corrosion-resistant, constructed of non-toxic and food-grade materials, and shall be kept in good repair. Shellfish dealers shall only use food contact surface equipment that conforms to standards found in the guidance document within the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section II: Model Ordinance titled "Shellfish Industry Equipment Construction Guide", which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp> at no cost.~~

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23 ~~(c) Food contact surfaces of equipment, utensils, and containers shall be cleaned at the end of each day or operation and shall be sanitized prior to the start-up of each day's activities. Food contact surfaces shall also be cleaned and sanitized following any interruption during which the surfaces have become contaminated.~~

24
25
26 ~~(d) Non-food contact surfaces such as equipment, floors, walls, ceilings, and windows shall be kept clean and in good repair.~~

27
28 ~~(d) (e) Wheelbarrows, measures, baskets, shovels, and other implements used in the handling of shellstock shall not be used for any other purpose and shall be cleaned and stored in the shellstock room when not in prior to use.~~

29
30 ~~(f) Shellfish dealers shall provide a temperature measuring device accurate to +/- 2°F for use in monitoring product temperatures.~~

31
32
33 *History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;*
34 *Eff. February 1, 1987-1987;*
35 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0412

DEADLINE FOR RECEIPT: January 26, 2024

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

On line 5, we recommend not using abbreviations in non-technical sections of rules. I.e. “[~~100°F~~] 100 degrees Fahrenheit”.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0412 is readopted as published in 38:03 NCR 130-131 as follows:

2

3 **15A NCAC 18A .0412 PLUMBING AND HAND WASHING FACILITIES**

4 (a) All plumbing shall be in compliance with applicable plumbing codes.

5 (b) Hand washing facilities shall be provided with running water at a minimum temperature of 100°F dispensed from
6 a hot and cold combination faucet.

7 (c) Hand washing facilities shall be provided in or adjacent to each bathroom and in shucking and packing rooms.
8 Hand washing facilities in packing areas shall be located where supervisors can observe employee use.

9 (d) Hand washing facilities shall be separate from three-compartment or other sinks used for cleaning equipment and
10 utensils.

11 (e) Soap, single service towels in protected dispensers, and an easily cleanable waste receptacle shall be available and
12 used at hand washing facilities. Other hand drying devices may be used if approved by the Division of Marine Fisheries
13 based upon being equally effective at drying hands without the potential for recontamination.

14

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

16 *Eff. February 1, ~~1987-1987;~~*

17 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0418

DEADLINE FOR RECEIPT: January 26, 2024

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

The word "separate" in item b, lines 6 and 7, is potentially vague. Is it meant to mean a separate room, area, or just separated from one another. The first sentence suggests that it is sufficient for the listed items to be stored anywhere other than processing areas or food contact surfaces. Is this correct?

Regrading the list in the second sentence, is the intent that these items be stored in separate rooms? Would separate shelves be sufficient? Or if they were on the same shelf but not intermingled?

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0418 is readopted as published in 38:03 NCR 132 as follows:

2

3 **15A NCAC 18A .0418 SUPPLY STORAGE**

4 ~~(a) Storage room shall be provided for storing shipping containers, tags, and other supplies. Shipping containers,~~
5 ~~boxes, and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.~~

6 (b) Pesticides, rodenticides, chemical agents, sanitizers, and other toxic substances shall be stored separate from
7 processing areas or food contact surfaces. Each of the following categories of toxic substances shall be stored separate
8 from one another:

9 (1) pesticides and rodenticides;

10 (2) detergents, sanitizers, and cleaning agents; and

11 (3) caustic acids, polishes, and other chemicals.

12 (c) Cleaning compounds, sanitizers, and other toxic substances shall be labeled and used in accordance with the
13 manufacturer's label directions.

14

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

16 *Eff. February 1, ~~1987-1987;~~*

17 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0420

DEADLINE FOR RECEIPT: January 26, 2024

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

On line 5, what does “tightly constructed” mean?

*On line 11, we recommend not using abbreviations in non-technical sections of rules.
I.e. “[45°F] 45 degrees Fahrenheit”.*

*On line 16, we recommend not using abbreviations in non-technical sections of rules.
I.e. “[45°F] 45 degrees Fahrenheit”.*

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0420 is readopted as published in 38:03 NCR 132 as follows:

2

3 **15A NCAC 18A .0420 TRANSPORTING SHELLSTOCKSHELLFISH**

4 (a) All ~~shellstock-shellfish~~ storage areas in trucks, ~~buy boats, buy trucks, vessels,~~ trailers, and other conveyances used
5 for transporting ~~shellstock-shellfish~~ shall be enclosed, tightly constructed, ~~painted with a light color washable paint,~~
6 kept clean, and shall be subject to inspection by the ~~Division.~~ Division of Marine Fisheries.

7 (b) ~~Shellstock shall be shipped under temperature and sanitary conditions in accordance with these Rules which will~~
8 ~~keep them alive and clean and will prevent adulteration or deterioration. All shellstock shall be kept under mechanical~~
9 ~~refrigeration at a temperature of 45°F (7.1°C) or below. All conveyances used to transport shellstock shall be equipped~~
10 ~~with an operating thermometer. It shall be unlawful to transport shellstock and in-shell product unless shipped under~~
11 ~~mechanical refrigeration and the shipping conveyance is pre-chilled and maintained at an ambient temperature of 45°F~~
12 ~~or below. The storage area of the shipping conveyance shall be equipped with an accurate, operating thermometer.~~

13 (c) ~~Buy boats and buy trucks shall be kept clean with water from a source approved by the Division under Rule .0413~~
14 ~~of this Subchapter. Buy boats and buy trucks shall provide storage space for clean shipping containers, identification~~
15 ~~tags, and records. It shall be unlawful to transport shucked shellfish unless maintained under temperature control of~~
16 ~~45°F or below.~~

17

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

19 *Eff. February 1, 1987;*

20 *Amended Eff. May 1, ~~1994-1994;~~*

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0421

DEADLINE FOR RECEIPT: January 26, 2024

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

On line 7 and 8, what is the definition for "retail sales"?

As a concrete example, would sales from a dealer to a restaurant count as a retail sale?

On line 24, we recommend not using abbreviations in non-technical sections of rules. I.e. "[45°F] 45 degrees Fahrenheit".

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0421 is readopted as published in 38:03 NCR 132-133 as follows:

2
3 **15A NCAC 18A .0421 ~~DAILY RECORD~~RECORDS**

4 (a) All ~~permitted persons shellfish dealers~~ who conduct any business of buying, selling, or shipping shellfish shall
5 keep an accurate, daily record ~~which that~~ shall show the names ~~and addresses~~ of all persons from whom shellfish are
6 received, ~~the address of any shellfish dealer from whom shellfish are received,~~ the location of the source of shellfish,
7 and the names and addresses of all persons to whom shellfish are sold or ~~shipped,~~ shipped with the exception of retail
8 sales. These records ~~shall be recorded and~~ shall be kept on file for a minimum of one year, ~~year for fresh shellfish,~~
9 and a minimum of two years for frozen shellfish. All records shall be open to inspection by the Division of Marine
10 Fisheries at the dealer facility at any time during business hours.

11 (b) All shellfish dealers who receive shellstock from licensed harvesters shall record the following information at the
12 time of receipt:

- 13 (1) harvester name;
- 14 (2) harvest area;
- 15 (3) time of the start of harvest;
- 16 (4) quantity and type of shellfish received;
- 17 (5) time shellfish were received; and
- 18 (6) time shellfish were mechanically refrigerated.

19 (c) Each shellfish shipment shipped by a shellfish dealer shall be accompanied by a shipping document that includes:

- 20 (1) name, address, and certification number of shipping dealer;
- 21 (2) name and address of major consignee;
- 22 (3) type and quantity of shellfish product;
- 23 (4) date and time of shipment;
- 24 (5) documentation that shipping conveyance is pre-chilled at 45°F or below prior to shipment; and
- 25 (6) temperature of shellstock recorded by shipping dealer at time of shipment.

26 (d) A dealer receiving a shellfish shipment from another shellfish dealer shall record the temperature of the shipping
27 conveyance and the temperature of the shellfish product received. These records shall be kept on file for a minimum
28 of one year for fresh shellfish, and a minimum of two years for frozen shellfish. All records shall be open to inspection
29 by the Division at the dealer facility at any time during business hours.

30 (e) Within 72 hours of any purchase or sale of shellfish, each purchase or sale shall be entered into a permanently
31 bound ledger book, computer record, or any other method that permanently records the information and is organized
32 so that it can be reviewed by the Division.

33
34 *History Note: Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;*
35 *Eff. February 1, 1987;*
36 *Amended Eff. August 1, ~~1998-1998;~~*
37 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0427

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 8, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

On line 11, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0427 is readopted as published in 38:03 NCR 133-134 as follows:

2

3 **15A NCAC 18A .0427 SHELLSTOCK ~~SHELLFISH~~ STORAGE**

4 ~~Shellstock held in wet or dry storage must be kept so that they will not become adulterated. All shellstock held in dry~~
5 ~~storage shall be kept under mechanical refrigeration at a temperature of 45°F (7.1°C) or below. All refrigerated~~
6 ~~shellstock storage areas shall be equipped with an operating thermometer.~~

7 (a) It shall be unlawful to fail to keep shellstock and in-shell product under mechanical refrigeration at a temperature
8 of 45°F or below unless otherwise required by proclamation issued under the authority of 15A NCAC 03K .0110 or
9 otherwise specified in the HACCP plan.

10 (b) Refrigerated storage areas shall be equipped with an accurate, operating thermometer.

11 (c) It shall be unlawful to fail to keep shucked shellfish under temperature control at a temperature of 45°F or below.

12

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

14 *Eff. February 1, 1987;*

15 *Amended Eff. May 1, 1994; December 1, ~~1987, 1987;~~*

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0428

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 4, what is the definition of a "public health reason"? What are the limits of this term?

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0428 is readopted as published in 38:03 NCR 134 as follows:

2

3 **15A NCAC 18A .0428 SAMPLING AND TESTING**

4 Samples of shellfish may be taken and ~~bacteriologically~~ examined for any public health reason under the authority of
5 the Marine Fisheries Commission by agents of the Division of Marine Fisheries at any time or place. This may include
6 bacteriological examination or analysis for poisonous or deleterious substances as listed in the latest approved edition
7 of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV:
8 Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or
9 Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and
10 editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food->
11 programs/national-shellfish-sanitation-program-nssp, at no cost. Samples of shellfish shall be furnished, upon ~~request,~~
12 request of the Division, by operators of plants, trucks, carriers, stores, restaurants, and other places where shellfish are
13 sold.

14

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

16 *Eff. February 1, ~~1987-1987;~~*

17 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0430

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 11, what is a "standard plate count"?

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0430 is readopted as published in 38:03 NCR 134 as follows:

2

3 **15A NCAC 18A .0430 BACTERIOLOGICAL AND CONTAMINATION STANDARDS**

4 Shellfish shucked or in the shell and intended or offered for sale ~~in North Carolina that exceed an Escherichia coli~~
5 ~~Most Probable Number of 230 per 100 grams of sample or a total bacteria count of more than 500,000 per gram or~~
6 ~~contain pathogenic organisms in sufficient numbers to be hazardous to the public health shall be deemed adulterated~~
7 ~~by the Division. Shellfish contaminated by any other substance which renders it unsafe for human consumption shall~~
8 ~~be deemed adulterated by the Division.~~ shall be deemed adulterated by the Division of Marine Fisheries if:

9 (1) the concentration of Escherichia coli exceeds a Most Probable Number (MPN), as defined in Rule
10 .0901 of this Subchapter, of 230 per 100 grams of sample;

11 (2) the total bacteria count, as determined by a standard plate count, exceeds 500,000 colony-forming
12 units, as defined in Rule .0901 of this Subchapter; or

13 (3) the shellfish contain any contaminant that renders it unsafe for human consumption in accordance
14 with the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the
15 Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas;
16 Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in
17 Seafood, which is incorporated by reference, including subsequent amendments and editions. A
18 copy of the reference material can be found at [https://www.fda.gov/food/federalstate-food-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
19 programs/national-shellfish-sanitation-program-nssp, at no cost.

20

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

22 *Eff. February 1, ~~1987-1987;~~*

23 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0434

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Regarding item (b), on p 1 lines 24-29, what is “training in the application of HACCP principles”?

How would someone know if training counted for the purposes of this rule?

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0434 is readopted as published in 38:03 NCR 135-136 as follows:

2
3 **15A NCAC 18A .0434 HACCP PLAN**

4 (a) Each shellfish dealer shall have and implement a written HACCP Plan, plan specific to each kind of shellfish
5 product processed. The owner or authorized designee individual shall sign the plan when implemented and after any
6 modification, implemented, which shall signify that the plan has been accepted for implementation by the dealer. The
7 HACCP plan shall also be signed by the owner or authorized individual after any modification or verification of the
8 plan as required by this Rule. The plan shall be reviewed and updated, if necessary, at least annually. The plan shall,
9 at a minimum:

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

19 For the purpose of this Rule, "reasonably likely to occur" shall mean a food safety hazard for which a processor would
20 establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude
21 that there is a reasonable possibility that it will occur in the absence of those controls, as defined in 21 CFR 123.6,
22 which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material
23 can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123>, at no cost.

24 (b) With the exception of a shellfish dealer that has not been permitted for interstate commerce, the following
25 functions shall be performed by an individual who has successfully completed training in the application of HACCP
26 principles to shellfish processing:

- 27 (1) developing a HACCP plan;
- 28 (2) reassessing and modifying the HACCP plan; and
- 29 (3) performing the record review specified in Paragraph (d) of this Rule.

30 (c) If a deviation from a critical limit occurs, the shellfish dealer shall take corrective action in accordance with 21
31 CFR 123.7, which is incorporated by reference, including subsequent amendments and editions. A copy of the
32 reference material can be found at [https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123/subpart-A/section-123.7#p-123.7(b))
33 A/section-123.7#p-123.7(b), at no cost.

34 (d) At least annually, each shellfish dealer shall verify that the HACCP plan is being implemented to control food
35 safety hazards. Verification procedures shall include:

- 36 (1) a reassessment of the plan when a change occurs that could affect the hazard analysis, and a review
37 of any consumer complaints that have been received; and

1 (2) a review, including signing and dating by the trained individual or responsible individual, of the
2 records that document the monitoring of critical control points, the taking of corrective actions, and
3 the calibrating of any process-monitoring instruments. This review shall occur within one week of
4 the day that the records are made.

5 (e) All records required by this Rule shall be retained at the dealer facility for at least one year after the date they were
6 prepared in the case of refrigerated products, and at least two years after the date they were prepared in the case of
7 frozen products and shall include:

- 8 (1) the name and location of the dealer;
9 (2) the date and time of the activity that the record reflects;
10 (3) the signature or initials of the individual performing the operation; and
11 (4) the identity of the product and the production code, if any.

12

13 *History Note:* Authority G.S. ~~130A-230~~; 113-134; 113-182; 113-221.2; 113-221.4; 143B-289.52;

14 Eff. August 1, ~~2000~~-2000;

15 Readopted Eff. April 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0437

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 4, we recommend not using abbreviations in non-technical sections of rules. I.e. "[45°F] 45 degrees Fahrenheit".

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 .0437 is adopted as published in 38:03 NCR 136-137 as follows:

2
3 **15A NCAC 18A .0437 IN-SHELL PRODUCT**

4 (a) In-shell product shall be kept under mechanical refrigeration at a temperature of 45°F or below.

5 (b) In-shell product shall be tagged or labeled to contain the following indelible and legible information listed in
6 sequential order:

7 (1) the shellfish dealer's name, address, and certification number assigned by the shellfish control
8 agency in the state of the shellfish dealer's location;

9 (2) the original shipper's certification number, except if the in-shell product is depurated, the original
10 shipper's certification number is not required;

11 (3) a "SELL BY DATE" that indicates the shelf-life or the words "BEST IF USED BY" followed by a
12 date when the product would be expected to reach the end of its shelf-life. The date shall include
13 month, day, and year;

14 (4) if the in-shell product is depurated, the depuration cycle number or lot number;

15 (5) the most precise identification of the harvest location as is practicable, including the initials of the
16 state of harvest, and the state or local shellfish control authority's designation of the growing area
17 by indexing, administrative, or geographic designation. If the authority in another state has not
18 indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long
19 Bay, shellfish lease or franchise number, or lot number);

20 (6) the type and quantity of in-shell product; and

21 (7) the following statement in bold type on each tag or label: "THIS TAG IS REQUIRED TO BE
22 ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT
23 ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN
24 LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT
25 DATE) _____." OR "THIS LABEL IS REQUIRED TO BE ATTACHED UNTIL
26 CONTAINER IS EMPTY OR IS RELABELED AND THEREAFTER KEPT ON FILE, IN
27 CHRONOLOGICAL ORDER, FOR 90 DAYS." "RETAILERS: DATE WHEN LAST
28 SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) _____."

29 (c) In-shell product shall include one of the following consumer advisories, or equivalent statement:

30 (1) "Consumer Advisory
31 Eating raw or undercooked oysters, clams, whole scallops, or mussels may cause severe illness.
32 People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes,
33 cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure
34 of your risk. If you eat shellfish and become sick, see a doctor immediately."

35 (2) "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk
36 of foodborne illness, especially if you have certain medical conditions."

37 (d) The statement "Keep Refrigerated" or an equivalent statement shall be included on the tag or label.

1 (e) If in-shell product for retail sale is packed in individual containers of five pounds or less and shipped in a master
2 container that includes a tag in compliance with Paragraph (b) of this Rule, the individual containers of five pounds
3 or less shall not require tags as specified in Paragraph (b) of this Rule if a lot code number is included on each container
4 that allows traceback of the in-shell product to the master container. A consumer advisory shall be included on each
5 retail package in accordance with Paragraph (c) of this Rule.

6
7 History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;
8 Eff. April 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0439

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Is the FDA Enforcement Policy on Recalls incorporated already? Where? If not, it appears that it needs to be.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0439 is adopted as published in 38:03 NCR 137 as follows:

2

3 **15A NCAC 18A .0439 RECALL PROCEDURE**

4 Each shellfish dealer shall adopt and adhere to a written procedure for conducting recalls of adulterated or misbranded
5 shellfish products. This written procedure shall be based on, and complementary to, the FDA Enforcement Policy on
6 Recalls, CFR Title 21, Chapter 1, Subchapter A., Part 7-Enforcement Policy. This procedure shall include shellfish
7 dealers notifying the Division of Marine Fisheries and any consignee receiving affected product when a recall begins,
8 as well as removal or correction of the affected product.

9

10 *History Note:* Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;

11 Eff. April 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0501

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

The material on lines 5 through 7 is a codifier note and is not up to the agency to delete. These notes are necessary to accommodate rule references in previously created documents. If you think the note is incorrect or no longer necessary, let the codifier know.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0501 is readopted as published in 38:03 NCR 137 as follows:

2

3

SECTION .0500 - OPERATION OF SHELLSTOCK PLANTS AND RESHIPPERS

4

5 ~~Rules .0501—.0504 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A~~
6 ~~.0501—.0504); has been transferred and recodified from Rules .1001—.1004 of Title 10 Subchapter 10B of the North~~
7 ~~Carolina Administrative Code (T10.10B .1001—.1004), effective April 4, 1990.~~

8

9 **15A NCAC 18A .0501 ~~GENERAL REQUIREMENTS~~ GENERAL REQUIREMENTS FOR SHELLSTOCK PLANTS AND RESHIPPERS**

10 The rules in Section .0400 and the rules of this Section shall apply for the operation of shellstock plants and reshippers.

11

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

13 *Eff. February 1, ~~1987~~1987;*

14 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0502

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

What are the standards for shellfish grading? I didn't see an explanation in these rules and was unable to quickly locate them in the incorporated material.

Related to the previous question, on line 13, what is a grader?

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0502 is readopted as published in 38:03 NCR 137 as follows:

2

3 **15A NCAC 18A .0502 GRADING SHELLSTOCK AND COMMINGLING**

4 (a) For the purpose of this Rule:

5 (1) "commingling" shall mean the act of combining different lots of shellfish harvested on different
6 days in the same growing area or combining different lots of shellstock harvested from different
7 growing areas.

8 (2) "lot" shall mean clams from one day's harvest, from a single growing area, harvested by one or more
9 harvesters.

10 ~~(a)~~(b) The grading of shellstock by a shellfish dealer shall be conducted only in a permitted shellstock plant.

11 ~~(b)~~(c) A ~~separate~~ grading room or area separate from other processing operations shall be required for the grading of
12 shellstock.

13 (d) The grader used to grade shellstock, and any other accessories or tables used in the grading operation, shall be
14 constructed to be easily cleanable and shall be kept in good repair.

15 (e) Shellfish dealers shall not commingle any shellfish, except for clams with prior approval of a commingling plan
16 by the Division of Marine Fisheries. A commingling plan shall be approved by the Division based on limiting the
17 dates of harvest and growing areas and maintaining lot identity so that each individual lot of shellfish can be traced
18 back to its harvest source.

19

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

21 *Eff. February 1, ~~1987~~1987;*

22 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0601

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

The material on lines 6 through 8 is a codifier note and is not up to the agency to delete. These notes are necessary to accommodate rule references in previously created documents. If you think the note is incorrect or no longer necessary, let the codifier know.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0601 is readopted as published in 38:03 NCR 138 as follows:
2

3 **SECTION .0600 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND**
4 **REPACKING PLANTS**
5

6 ~~Rules .0601—.0619 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A~~
7 ~~.0601—.0619); has been transferred and recodified from Rules .1101—.1119 of Title 10 Subchapter 10B of the North~~
8 ~~Carolina Administrative Code (T10.10B .1101—.1119), effective April 4, 1990.~~
9

10 **15A NCAC 18A .0601 ~~GENERAL REQUIREMENTS~~ FOR SHUCKING AND PACKING PLANTS AND**
11 **REPACKING PLANTS**

12 The rules in Section .0400 and the rules of this Section shall apply for the operation of shucking and packing plants
13 and repacking plants.
14

15 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
16 *Eff. February 1, ~~1987-1987;~~*
17 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0603

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 5, we recommend not using abbreviations in non-technical sections of rules. I.e. "~~130°F~~ 130 degrees Fahrenheit".

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0603 is readopted as published in 38:03 NCR 138 as follows:

2

3 **15A NCAC 18A .0603 HOT WATER SYSTEM**

4 An automatically regulated hot water system shall be provided ~~which~~that has ~~sufficient~~ capacity to furnish water at a
5 temperature of at least 130°F (~~54°C~~) during all hours of shucking and packing plant operation.

6

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

8 *Eff. February 1, ~~1987-1987;~~*

9 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0608

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 9, what is a "V-type thread"?

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0608 is readopted as published in 38:03 NCR 138 as follows:

2

3 **15A NCAC 18A .0608 EQUIPMENT CONSTRUCTION**

4 (a) All pails, skimmers, measures, tanks, tubs, blowers, paddles, and other equipment, ~~which that~~ come into contact
5 with shucked shellfish or with ice used for direct cooling of shellfish, shall be made of smooth, non-corrosive,
6 impervious materials and constructed so as to be easily cleanable and shall be kept clean and in good repair.

7 (b) All equipment, including external and internal blower lines and hoses below a point two inches above the overflow
8 level of the tank and blower drain valves, shall be constructed as to be easily ~~cleanable;~~ cleanable and there shall be
9 no V-type threads in the food-product zone of the blower.

10 (c) The blower and skimmer drain shall not be directly connected with the sewer. There shall be an air ~~gap, approved~~
11 ~~by the Division,~~ gap between the blower and skimmer outlets. A floor drain shall be provided.

12 (d) Air-pump intakes shall be located in a place protected from dirt and other contamination, and shall be equipped
13 with filters.

14

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

16 *Eff. February 1, 1987;*

17 *Amended Eff. September 1, ~~1990, 1990;~~*

18 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0610

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 8, we recommend not using abbreviations in non-technical sections of rules. I.e. "~~170°F~~ 170 degrees Fahrenheit".

On line 9, we recommend not using abbreviations in non-technical sections of rules. I.e. "~~45°F~~ 200 degrees Fahrenheit".

On line 10, we recommend not using abbreviations in non-technical sections of rules. I.e. "~~170°F~~ 170 degrees Fahrenheit".

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0610 is readopted as published in 38:03 NCR 139 as follows:

2
3 **15A NCAC 18A .0610 EQUIPMENT SANITATION**

4 All utensils and tools, such as opening knives, shucking pails, measures, skimmers, colanders, tanks, tubs, paddles,
5 and containers ~~which that~~ come in contact with ~~the~~ shellfish shall be thoroughly cleaned and then ~~sanitized~~:sanitized
6 by:

- 7 (1) ~~by~~ steam in a steam chamber or box equipped with an indicating thermometer located in the coldest
8 zone, by exposure to a temperature of 170°F (~~76°C~~) for at least 15 minutes, or to a temperature of
9 200°F (~~93°C~~) for at least five minutes;
- 10 (2) ~~by~~ immersion in hot water at a temperature of 170°F (~~76°C~~) for at least two ~~minutes (a thermometer~~
11 ~~is required)~~:minutes;
- 12 (3) ~~by~~ immersion for at least one minute in, or exposure for at least one minute ~~to, to~~ a constant flow ~~of~~
13 of a solution containing not less than 100 parts per million chlorine residual. Utensils and equipment
14 ~~which have to that must~~ be washed in place ~~will shall~~ require washing, rinsing, and sanitizing; or
- 15 (4) ~~by a bactericidal treatment method which will provide equivalent sanitization to that provided by~~
16 ~~the methods authorized in (1), (2), or (3), as determined by the Division. If the bactericidal~~
17 ~~immersion or spray treatment is employed, testing kits shall be used to ensure that minimum solution~~
18 ~~strengths are maintained throughout the cleaning process.~~other equivalent products and procedures
19 approved in 21 CFR 178.1010, which is incorporated by reference, including subsequent
20 amendments and editions. A copy of the reference material can be found at
21 [https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-178/subpart-B/section-](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-178/subpart-B/section-178.1010)
22 178.1010, at no cost.

23 A testing method or equipment shall be available and used to test chemical sanitizers to ensure minimum prescribed
24 strengths.

25
26 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
27 *Eff. February 1, ~~1987-1987;~~*
28 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0615

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 8, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

On line 10, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

On line 12, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

On line 13, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0615 is readopted as published in 38:03 NCR 140 as follows:

2

3 **15A NCAC 18A .0615 SHELLFISH COOLING**

4 ~~Shucked shellfish shall be cooled to an internal temperature of 45°F (7°C) or less within two hours after delivery to~~
5 ~~the packing room. Storage temperatures shall be 40° F (4° C) or below. No ice or other foreign substance shall be~~
6 ~~allowed to come into contact with the shellfish after processing has been completed.~~

7 (a) For shellstock that has not been refrigerated prior to processing, shucked meats and in-shell product shall be chilled
8 to an internal temperature of 45°F or less within three hours of shucking or processing.

9 (b) For shellstock that has been refrigerated prior to processing, shucked meats and in-shell product shall be chilled
10 to an internal temperature of 45°F or less within four hours after removal from refrigeration.

11 (c) If heat shock is used, once shellstock is shucked, the shucked shellfish meats shall be cooled to an internal
12 temperature of 45°F or less within two hours from the time of heat shock.

13 (d) Shucked and packed shellfish shall be stored in covered containers at an ambient temperature of 45°F or less or
14 covered in ice.

15

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

17 *Eff. February 1, 1987;*

18 *Amended Eff. April 1, ~~1997-1997;~~*

19 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0616

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 7, we recommend not using abbreviations in non-technical sections of rules. I.e. “[0°F] 0 degrees Fahrenheit”.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0616 is readopted as published in 38:03 NCR 140 as follows:

2

3 **15A NCAC 18A .0616 SHELLFISH FREEZING**

4 (a) If shellfish are to be frozen, they shall be frozen within three days of shucking and ~~packing and the shucked date~~
5 ~~shall be preceded by the letter (F),~~ packing. Containers of frozen shellfish shall be labeled in accordance with Rule
6 .0614 of this Section.

7 (b) A temperature of ~~0° F (-18° C)~~ 0° F or less shall be maintained in the frozen storage rooms.

8

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

10 *Eff. February 1, 1987;*

11 *Amended Eff. April 1, 1997; December 1, ~~1987-1987;~~*

12 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0618

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

*On line 11, we recommend not using abbreviations in non-technical sections of rules.
I.e. "~~140°F~~ 140 degrees Fahrenheit".*

*On line 12, we recommend not using abbreviations in non-technical sections of rules.
I.e. "~~150°F~~ 150 degrees Fahrenheit".*

*On line 22, we recommend not using abbreviations in non-technical sections of rules.
I.e. "~~45°F~~ 45 degrees Fahrenheit".*

*On line 23, we recommend not using abbreviations in non-technical sections of rules.
I.e. "~~45°F~~ 45 degrees Fahrenheit".*

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0618 is readopted as published in 38:03 NCR 140-141 as follows:

2
3 **15A NCAC 18A .0618 HEAT SHOCK METHOD OF PREPARATION OF SHELLFISH**

4 (a) ~~Facilities.~~—If a shucking and packing plant uses the heat shock process, it shall be done in a separate room adjacent
5 to the shellstock storage room and the shucking room.

6 (b) ~~Tank construction.~~—The heat shock tank shall be constructed of smooth, non-corrosive metal, designed to drain
7 ~~quickly and completely and to be easily and thoroughly cleaned.~~ cleanable.

8 (c) ~~Booster heaters.~~—All heat shock tanks shall be equipped with booster heaters that are thermostatically controlled.

9 (d) ~~Shellstock washing.~~—All shellstock subjected to the heat shock process shall be ~~thoroughly~~ washed with flowing
10 potable water immediately prior to the heat shock operation.

11 (e) ~~Water temperature.~~—During the heat shock process the water shall be maintained at not less than 140°F (60°C) or
12 more than ~~150°F (65°C).~~ 150°F. An accurate thermometer shall be available and used to determine the temperature
13 during the heat shock process. ~~The heat shock tanks shall be drained and cleaned at the end of each day's operation.~~

14 (f) ~~Alternatives to heat shock method.~~—Nothing in ~~these Rules~~ this Rule shall be construed to prohibit any other
15 process ~~which that~~ that has been found by the Division of Marine Fisheries to be equally effective.

16 (g) ~~Water requirements.~~—At least eight gallons of heat shock water shall be maintained in the tank for each ~~one-half~~
17 one-half bushel of shellstock being treated. All water used in the heat shock process shall be from a source approved
18 by the Division ~~under in accordance with~~ Rule .0413 of this Subchapter.

19 (h) ~~Cooling.~~—Immediately after the heat shock process, all treated shellstock shall be subjected to a cool-down with
20 flowing potable ~~tap~~ water. All ~~heat-shocked~~ heat-shocked shellstock shall be handled in a manner to prevent
21 ~~adulteration of the product.~~ the product from becoming adulterated. Shellfish ~~which that~~ have been subjected to the
22 heat shock process shall be cooled to an internal temperature of 45°F (7°C) or below within two hours after this process
23 and shall be placed in storage at ~~40°F (4°C)~~ 45°F or below.

24 (i) ~~Cleaning.~~—At the close of each day's operation, the heat shock tank shall be completely emptied of all water, mud,
25 and detritus, and ~~thoroughly~~ cleaned and then rinsed with flowing potable water.

26 (j) ~~Sanitizing.~~—All heat shock tanks shall be sanitized immediately before starting each day's operation.

27 (k) The procedure for the heat shock process shall be posted in a location that can be viewed by employees to help
28 ensure the correct procedure can be followed.

29
30 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;

31 Eff. February 1, 1987;

32 Amended Eff. August 1, 2002; August 1, 1998; February 1, 1997; September 1, 1990-1990;

33 Readopted Eff. April 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0619

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 7, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

On line 9, we recommend not using abbreviations in non-technical sections of rules. I.e. “[45°F] 45 degrees Fahrenheit”.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0619 is readopted as published in 38:03 NCR 141 as follows:

2
3 **15A NCAC 18A .0619 REPACKING OF SHELLFISH**

4 (a) If repacking is practiced, it shall be ~~done strictly conducted~~ in accordance with all the requirements stipulated for
5 shucking and packing plants in the rules of this Section except ~~those for requirements~~ related to shucking.

6 (b) The shucked shellfish to be repacked shall be received at the repacking plant ~~in approved shipping containers~~ at a
7 temperature of ~~32°-40°F (0°-4°C)~~ 45°F or less.

8 (c) Shellfish shall not be repacked more than one time.

9 (d) The temperature of the shellfish shall not exceed an internal temperature of 45°F (7°C) ~~for more than two hours~~
10 during the repacking process.

11 ~~Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL~~
12 ~~BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are~~
13 ~~repacked shall be dated to show the original shucking date and repacking date, which will be preceded by the letter~~
14 ~~(R).~~ Containers of repacked shellfish shall be repacked and labeled in accordance with Rule .0614 of this Section,
15 except that the original date of shucking shall be added to the new repacked container or the original date of shucking
16 shall be used in establishing the "SELL BY" or "BEST IF USED BY" date.

17 (f) Repackers shall keep ~~accurate~~ records indicating the source from which shellfish were purchased, the date packed,
18 the date of purchase, ~~the area within the state or territory from which the shellfish were harvested,~~ and the names and
19 addresses of ~~persons~~ shellfish dealers to whom ~~the~~ shellfish were sold.

20
21 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
22 *Eff. February 1, 1987;*
23 *Amended Eff. December 1, ~~1987-1987;~~*
24 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0620

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Is item (a) on line 4 meant to apply only to shellfish being thawed for repacking? If so, consider "Frozen shellfish that are being thawed for repacking shall be thawed".

On line 4, we recommend not using abbreviations in non-technical sections of rules. I.e. "[45°F] 45 degrees Fahrenheit".

On line 6, we recommend not using abbreviations in non-technical sections of rules. I.e. "[45°F] 45 degrees Fahrenheit".

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0620 is readopted as published in 38:03 NCR 141 as follows:

2

3 **15A NCAC 18A .0620 SHELLFISH THAWING AND REPACKING**

4 (a) Frozen shellfish shall be thawed ~~under temperatures not to exceed 45° F (7° C)~~ at a temperature of 45°F or less.

5 (b) Shellfish held for thawing shall be separated from other shellfish.

6 (c) Thawed shellfish shall not exceed ~~45° F (7° C)~~ 45°F for more than two hours during the repacking process.

7 (d) Containers of repacked, thawed shellfish shall be labeled as required in Rule .0619 of this Section and shall also
8 be labeled as "PREVIOUSLY FROZEN", or equivalent.

9 (e) Thawed ~~shellfish, which~~ shellfish that remain in original containers, containers shall be labeled as required in Rule
10 .0614 of this Section and shall also be labeled as "PREVIOUSLY FROZEN", or equivalent.

11

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

13 *Eff. April 1, ~~1997~~ 1997;*

14 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0701

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

The material on lines 5 through 7 is a codifier note and is not up to the agency to delete. These notes are necessary to accommodate rule references in previously created documents. If you think the note is incorrect or no longer necessary, let the codifier know.

On line 20, what constitutes a "critical need" for the purposes of this rule? And who decides? I see that the term "critical need" appears in the NSSP Guide, but I'm not clear on the meaning.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0701 is readopted as published in 38:03 NCR 141 as follows:

2
3 **SECTION .0700 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES**

4
5 ~~Rules .0701—.0713 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A~~
6 ~~.0701—.0713); has been transferred and recodified from Rules .1201—.1213 of Title 10 Subchapter 10B of the North~~
7 ~~Carolina Administrative Code (T10.10B .1201—.1213), effective April 4, 1990.~~

8
9 **15A NCAC 18A .0701 ~~GENERAL REQUIREMENTS~~ FOR DEPURATION**

10 ~~(a) The Rules in Section .0400 shall apply for the operation of depuration facilities.~~ In addition to and to the extent
11 not inconsistent with other applicable provisions of North Carolina Marine Fisheries Commission rules, requirements
12 for depuration shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP)
13 Guide for the Control of Molluscan Shellfish chapter titled "Depuration", which is incorporated by reference, not
14 including subsequent amendments and editions. A copy of the reference material is available online at:
15 <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

16 (b) All laboratory analyses used to evaluate the effectiveness of the depuration process shall be performed by a
17 laboratory found by a Food and Drug Administration (FDA) Shellfish Laboratory Evaluation Officer or by an FDA-
18 certified State Shellfish Laboratory Evaluation Officer to conform or provisionally conform to the requirements
19 established under the National Shellfish Sanitation Program (NSSP).

20 (c) If there is an immediate or ongoing critical need for a method for the analysis of depuration process water and
21 shellfish that are used to evaluate the effectiveness of the depuration process and no method approved for use within
22 the NSSP exists, the following may be used:

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

27
28 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
29 *Eff. February 1, ~~1987~~1987;*
30 *Readopted Eff. April 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0801

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

The material on lines 5 through 7 is a codifier note and is not up to the agency to delete. These notes are necessary to accommodate rule references in previously created documents. If you think the note is incorrect or no longer necessary, let the codifier know.

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

Seth Ascher
Commission Counsel

Date submitted to agency: January 12, 2024

1 15A NCAC 18A .0801 is readopted as published in 38:03 NCR 142 as follows:

2
3 **SECTION .0800 - WET STORAGE OF SHELLSTOCK**

4
5 ~~Rules .0801—.0806 of Title 15A Subchapter 10B of the North Carolina Administrative Code (T15A.10B~~
6 ~~.0801—.0806); has been transferred and recodified from Rules .1301—.1306 of Title 10 Subchapter 10B of the North~~
7 ~~Carolina Administrative Code (T10.10B .1301—.1306), effective April 4, 1990.~~

8
9 **15A NCAC 18A .0801 ~~GENERAL REQUIREMENTS~~ GENERAL REQUIREMENTS FOR WET STORAGE OF SHELLSTOCK**

10 ~~The rules in Section .0400 shall apply for wet storage of shellstock.~~ (a) In addition to and to the extent not inconsistent
11 with other applicable provisions of North Carolina Marine Fisheries Commission Rules, requirements for wet storage
12 shall be in accordance with the 2019 Revision of the National Shellfish Sanitation Program (NSSP) Guide for the
13 Control of Molluscan Shellfish (hereinafter referred to as "Model Ordinance") chapter titled "Wet Storage in Approved
14 and Conditionally Approved Growing Areas", which is incorporated by reference except as provided in Paragraph (b)
15 of this Rule, not including subsequent amendments and editions. A copy of the reference material is available online
16 at: <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost.

17 (b) Amendments and exceptions to the Model Ordinance chapter titled "Wet Storage in Approved and Conditionally
18 Approved Growing Areas" incorporated by reference include:

19 (1) Section @.01, .04, C(1)(a) is amended to read: "Except for a water source in accordance with Rule
20 .0413 of this Subchapter, the quality of the surface source water prior to treatment shall meet, at a
21 minimum, the bacteriological standards for the conditionally approved classification in the open
22 status. Water classified as prohibited or restricted shall not be used as source water."

23 (2) the following sections are not incorporated by reference and shall not apply: Sections @.01, .04,
24 C(2)(a)(ii), @.01, .04, C(2)(b), @.01, .04, C(2)(c), and @.01, .04, C(2)(d).

25
26 *History Note: Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;~~*
27 *Eff. February 1, ~~1987-1987;~~*
28 *Readopted Eff. April 1, 2024.*