



TEMPORARY RULE-MAKING OAH USE ONLY

FINDINGS OF NEED

[Authority G.S. 150B-21.1]

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. MARINE FISHERIES COMMISSION			
2. Rule citation & name: 15A NCAC 03I .0123 COMMERCIAL HARVEST REPORTING REQUIREMENTS			
3. Action:	Adoption	Amendment	Repeal
4. Was this an Emergency Rule: Yes No		Effective date: N/A	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: APRIL 19, 2024 b. Proposed Temporary Rule published on the OAH website: APRIL 23, 2024 c. Public Hearing date: MAY 1, 2024 d. Comment Period: APRIL 22-MAY 20, 2024 e. Notice pursuant to G.S. 150B-21.1(a3)(2): APRIL 22, 2024 f. Adoption by agency on: JUNE 6, 2024 g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3: N/A			
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <p style="margin-left: 40px;">A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2023-137, s. 6 Effective date: OCTOBER 10, 2023</p> <p style="margin-left: 40px;">A recent change in federal or state budgetary policy. Effective date of change:</p> <p style="margin-left: 40px;">A recent federal regulation. Cite: Effective date:</p> <p style="margin-left: 40px;">A recent court order. Cite order:</p> <p style="margin-left: 40px;">Other:</p> <p>Explain: Session Law 2023-137, Section 6, requires that any person who recreationally harvests red drum, flounder, spotted seatrout (speckled trout), striped bass, and weakfish (gray trout) from coastal fishing waters, joint fishing waters, and inland fishing waters adjacent to coastal or joint fishing waters must report that harvest to the N.C. Division of Marine Fisheries (DMF). Additionally, it requires anyone holding a commercial fishing license who is engaged in a commercial fishing operation to report all fish harvested to DMF, regardless of sale. The legislation directs the Marine Fisheries Commission (MFC) and the Wildlife Resources Commission (WRC) to adopt temporary rules to implement the requirements and to adopt permanent rules to replace the temporary rules; the temporary rules shall remain in effect until permanent rules that replace the temporary rules become effective. On February 23, 2024, the MFC requested a waiver from the Rules Review Commission (RRC) of G.S. 150B-21.1(a2), which requires a temporary rule based upon a legislative change be submitted to the RRC within 210 days of the enactment of the legislation. Session Law 2023-137, Section 6 became law on October 10, 2023, and the MFC would have been required to submit temporary rules no later than May 7, 2024. At its February 28, 2024 meeting, the RRC voted to grant the MFC's waiver request to submit temporary rules, and thereby waived the 210-day requirement for temporary rulemaking for an additional 60 days from May 7, 2024 until July 6, 2024.</p>			

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0123 (Temporary)

DEADLINE FOR RECEIPT: Thursday, June 20, 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:

In line 4, replace "Pursuant to" with "Under" for clarity. "Under" is more accurate since "harvest" is not defined in G.S. 113-170.3.

In line 5, will the phrase "reduction of such fish to possession" be clear to your regulated public? Who will have "possession" of the fish once they're reduced? The vessel's captain, first mate, deckhands, or anglers may all be involved in catching fish.

In (a)(1), should "the" shore be changed to "any" shore?

In (a)(2), the phrase "at the moment a person is no longer engaged in fishing" seems amorphous. What if someone catches a fish, stops briefly, then resumes fishing? When is the "harvest" complete for the caught fish? The timing of when the harvest is complete is important for compliance with subsection (b) of this Rule.

In (b) line 9, to whom and how shall the harvest be reported? Also, please delete the comma after "complete."

In (b)(1), I don't see any "reporting" requirements in G.S. 113-168.2. I only see "recording" requirements in subsection (i). Please confirm if your citation is accurate.

In line 12, should the "and" after the semicolon be changed to "or"?

In (b)(2) line 14, is there a reason to use the language "in the same manner as provided...for a transaction" instead of "in Rule .0114 of this Section" as was done in subsection (1)? Is there a distinction that makes it necessary to use different language?

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

Travis Wiggs
Commission Counsel
Date submitted to agency: 6/14/24

1 15A NCAC 03I .0123 is adopted under temporary procedures with changes as follows:

2

3 **15A NCAC 03I .0123 COMMERCIAL HARVEST REPORTING REQUIREMENTS**

4 (a) Pursuant to G.S. 113-170.3 and for the purpose of this Rule, "harvest" shall mean the catching or taking of a fish
5 by any means, followed by a reduction of such fish to possession. Harvest shall be deemed complete:

6 (1) if a vessel is used, when fish reach the shore or a structure connected to the shore; or

7 (2) if a vessel is not used, at the moment a person is no longer engaged in fishing.

8 (b) Any person holding a commercial fishing license engaged in a commercial fishing operation who completes the
9 harvest of any fish in coastal or joint fishing waters shall report that harvest within 48 hours of harvest being complete,
10 as follows:

11 (1) for fish sold, harvest shall be reported in accordance with the reporting requirements in G.S. 113-
12 168.2 and recordkeeping requirements in Rule .0114 of this Section; and

13 (2) for fish harvested but not sold, harvest shall be reported in accordance with the reporting
14 requirements in G.S. 113-168.2 and in the same manner as provided in Rule .0114 of this Section
15 for a transaction.

16 (c) The requirements of this Rule shall be effective in accordance with the schedule in S.L. 2023-137, s. 6(f).

17

18 *History Note: Authority G.S. 113-134; 113-170.3; 113-181; 113-182; 143B-289.52;*

19 *Temporary Adoption Eff. XXXXXX, 2024.*



TEMPORARY RULE-MAKING OAH USE ONLY

FINDINGS OF NEED

[Authority G.S. 150B-21.1]

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. MARINE FISHERIES COMMISSION			
2. Rule citation & name: 15A NCAC 031 .0124 NON-COMMERCIAL HARVEST REPORTING REQUIREMENTS			
3. Action:	Adoption	Amendment	Repeal
4. Was this an Emergency Rule: Yes No		Effective date: N/A	
5. Provide dates for the following actions as applicable:			
a. Proposed Temporary Rule submitted to OAH: APRIL 19, 2024			
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f. Adoption by agency on: JUNE 6, 2024			
g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3: N/A			
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.			
<p>A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2023-137, s. 6 Effective date: OCTOBER 10, 2023</p> <p>A recent change in federal or state budgetary policy. Effective date of change:</p> <p>A recent federal regulation. Cite: Effective date:</p> <p>A recent court order. Cite order:</p> <p>Other:</p>			
<p>Explain: Session Law 2023-137, Section 6, requires that any person who recreationally harvests red drum, flounder, spotted seatrout (speckled trout), striped bass, and weakfish (gray trout) from coastal fishing waters, joint fishing waters, and inland fishing waters adjacent to coastal or joint fishing waters must report that harvest to the N.C. Division of Marine Fisheries (DMF). Additionally, it requires anyone holding a commercial fishing license who is engaged in a commercial fishing operation to report all fish harvested to DMF, regardless of sale. The legislation directs the Marine Fisheries Commission (MFC) and the Wildlife Resources Commission (WRC) to adopt temporary rules to implement the requirements and to adopt permanent rules to replace the temporary rules; the temporary rules shall remain in effect until permanent rules that replace the temporary rules become effective. On February 23, 2024, the MFC requested a waiver from the Rules Review Commission (RRC) of G.S. 150B-21.1(a2), which requires a temporary rule based upon a legislative change be submitted to the RRC within 210 days of the enactment of the legislation. Session Law 2023-137, Section 6 became law on October 10, 2023, and the MFC would have been required to submit temporary rules no later than May 7, 2024. At its February 28, 2024 meeting, the RRC voted to grant the MFC's waiver request to submit temporary rules, and thereby waived the 210-day requirement for temporary rulemaking for an additional 60 days from May 7, 2024 until July 6, 2024.</p>			

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0124 (Temporary)

DEADLINE FOR RECEIPT: Thursday, June 20, 2024.

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

In line 4, replace "Pursuant to" with "Under" for clarity. "Under" is more accurate since "harvest" is not defined in G.S. 113-170.3.

In line 5, will the phrase "reduction of such fish to possession" be clear to your regulated public? Who will have "possession" of the fish once they're reduced? The vessel's captain, first mate, deckhands, or anglers may all be involved in catching fish.

In (a)(1), should "the" shore be changed to "any" shore?

In (a)(2), the phrase "at the moment a person is no longer engaged in fishing" seems amorphous. What if someone catches a fish, stops briefly, then resumes fishing? When is the harvest "complete" for the caught fish? The timing of when the harvest is complete is important for compliance with subsection (b) of this Rule.

In (b) line 9, please add "as defined in 15A NCAC 03I .0123(a)," after "harvest."

In line 10, add an "s" to "Harvest."

In (b) lines 10-11, is there another MFC rule related to the electronic reporting of harvests? Is "required by the Division of Marine Fisheries" necessary to include? The public already knows this since your agency has adopted this Rule.

In line 11, does your agency characterize the "Division-issued report card" as a "form" under G.S. 150B-2(8d)? Are the contents of the "report card" described in another Rule or in a statute?

In lines 11-12, add "in accordance with 15A NCAC 03I .0123" after "complete."

In line 13, consider replacing the comma after "complete" with a period. Delete "except" and start the sentence with "When".

Travis Wiggs
Commission Counsel
Date submitted to agency: 6/14/24

In (b)(1) line 16, please spell out "N.C."

In (b)(1), is the "person" referred to the individual who harvested the fish? Please make this clear for the regulated public.

*In line 17, add "the zip code of their **primary** residence" after "and".*

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

1 15A NCAC 03I .0124 is adopted under temporary procedures with changes as follows:
2

3 **15A NCAC 03I .0124 NON-COMMERCIAL HARVEST REPORTING REQUIREMENTS**

4 (a) Pursuant to G.S. 113-170.3 and for the purpose of this Rule, "harvest" shall mean the catching or taking of a fish
5 by any means, followed by a reduction of such fish to possession. Harvest shall be deemed complete:

- 6 (1) if a vessel is used, when fish reach the shore or a structure connected to the shore; or
- 7 (2) if a vessel is not used, at the moment a person is no longer engaged in fishing.

8 (b) Any person, other than a person holding a commercial fishing license engaged in a commercial fishing operation,
9 who completes the harvest of a flounder, red drum, spotted seatrout, striped bass, or weakfish in coastal or joint fishing
10 waters shall report that harvest. Harvest shall be reported by either electronic reporting means required by the Division
11 of Marine Fisheries online at <https://www.ncmarinefisheries.net>, or a Division-issued report card. Electronic reports
12 shall be submitted at the time harvest is complete. Division-issued report cards shall be completed at the time harvest
13 is complete and submitted electronically to the Division by midnight the day after harvest is complete, except when
14 the day after harvest is complete is a Sunday or a federal holiday, electronic submission of a report card is due no later
15 than midnight on the first day that is not a Sunday or a federal holiday. Harvest data to be reported shall include:

- 16 (1) person's valid N.C. fishing license number, or if a person does not have a valid N.C. fishing license
17 number, person's first name, last name, and zip code of residence;
- 18 (2) date of harvest;
- 19 (3) species identification;
- 20 (4) number of each species;
- 21 (5) species length, if applicable;
- 22 (6) area of harvest; and
- 23 (7) type of gear used.

24 (c) The requirements of this Rule shall be effective in accordance with the schedule in S.L. 2023-137, s. 6(f).
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26 *History Note: Authority G.S. 113-134; 113-170.3; 113-181; 113-182; 143B-289.52;*
27 *Temporary Adoption Eff. XXXXXX, 2024.*