

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 20 • Pages 1734 - 1777

April 15, 2008

I. EXECUTIVE ORDERS

Executive Order No. 139 1734 – 1737

II. IN ADDITION

Brownfields Property – Albert Pick, LLC 1738
Decision Letters on "Changes Affecting Voting" from US Attorney General 1739 – 1740

III. PROPOSED RULES

Environment and Natural Resources, Department of

Marine Fisheries Commission..... 1748 – 1770
Wildlife Resources Commission..... 1770 – 1771

Health and Human Services, Department of

Mental Health/DD/SAS, Division of..... 1741 – 1748

IV. CONTESTED CASE DECISIONS

Index to ALJ Decisions 1772 – 1777

PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 733-2678
Fax (919) 733-3462*

*Julian Mann, III, Director
Camille Winston, Deputy Director
Molly Masich, Codifier of Rules
Dana Vojtko, Publications Coordinator
Julie Edwards, Editorial Assistant
Felicia Williams, Editorial Assistant*

Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
Capehart-Crocker House
424 North Blount Street
Raleigh, North Carolina 27601-2817
(919) 733-2678
(919) 733-3462 FAX

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159
Raleigh, North Carolina 27605
(919) 733-2721
(919) 733-9415 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928
Angela Person, Administrative Assistant angela.person@ncmail.net (919) 733-2721

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 807-4700
(919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-4000

contact: Anita Watkins awatkins@ncmlm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2008 – December 2008

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

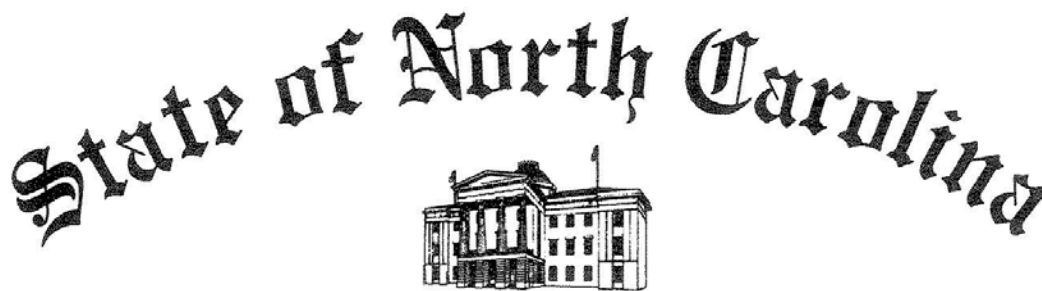
NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 139
NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED THAT:**

Section 1. Establishment

The North Carolina State Health Coordinating Council (Council) is hereby established.

Section 2. Duties

The Council shall have the following duties and functions:

- a. serve as a forum for hearing regional concerns and recommendations relating to health planning;
- b. compile a list of state health needs and advise the Department of Health and Human Services;
- c. advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional, and statewide needs.
- d. review and comment on contents of documents related to health planning and make recommendations concerning them to the Secretary of Human Resources and the Governor;
- e. advise the Department of Health and Human Services on cost-effective mechanisms for achieving health needs;
- f. prepare the Annual State Medical Facilities Plan and present the plan to the Governor.

Section 3. Membership

The Council shall consist of 29 members who shall be appointed by the Governor as follows:

- a. one member from the academic medical centers;
- b. one member from the area health education centers;
- c. two members from business and industry (at least one individual representing small business and one representing large business);
- d. one member from the health insurance industry;
- e. one member from the North Carolina Association of County Commissioners;
- f. one member from the North Carolina Health Care Facilities Association;
- g. one member from the North Carolina Hospital Association;
- h. one member from the North Carolina Association for Home Care;
- i. one member from the North Carolina Association of Long-Term Care Facilities;
- j. one member from the North Carolina Association of Local Health Directors;
- k. one member from the North Carolina Medical Society;
- l. one member from the North Carolina House of Representatives;
- m. one member from the North Carolina Senate;
- n. one member from the United States Department of Veterans Affairs (non-voting);
- o. fourteen at-large members to represent other health professional associations and to ensure regional representation.

Section 4. Terms of Membership

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. All members shall

be appointed for a term of three years. Terms shall expire on December 31 and new terms shall begin on January 1.

Section 5. Vacancies

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses

Members of the Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. §138-5.

Section 7. Chairman

The Chairman and Vice Chairman of the Council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings

The Council shall meet quarterly and at other times at the call of the Chairman or upon written request of at least ten (10) of its members. All business meetings of the Council, its committees and subcommittees, or special task forces shall be open to the public.

Section 9. Staff Assistance

The Department of Health and Human Services shall provide clerical support and other services required by the Council.

Section 10.


Executive Order No. 98 is hereby rescinded.

This order is effective immediately.


IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this third day of March in the

year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Albert Pick, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Albert Pick, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Greensboro, Guilford County, North Carolina. The Property consists of approximately 7.46 acres and is located at 7055 Albert Pick Road. Environmental contamination exists on the Property in soil and groundwater. Albert Pick, LLC acquired the Property on July 15, 2003, and has subsequently redeveloped it for use for a grading equipment storage facility and for office and showroom space for other commercial uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Albert Pick, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed on the wall outside the Guilford County Clerk of Court's Office (Level UG), 201 S. Eugene Street, Greensboro, NC 27401 by contacting Cindy Bumgarner at (336) 691-9222, P.O. Box 20744, Greensboro, NC 27420, cindyb@cgspllc.com; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments, may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Albert Pick, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on April 16, 2008. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605



U.S. Department of Justice

Civil Rights Division

CC:RPL:ER:maf
DJ 166-012-3
2008-0174

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

February 25, 2008

Richard J. Rose, Esq.
Poyner & Spruill
P.O. Box 353
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to three annexations (Ordinance Nos. O-2007-84, O-2007-97, and O-2007-98) and their designation to wards of the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 15, 2008.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Coates", is written over the word "Sincerely,".

Christopher Coates
Acting Chief, Voting Section



RECEIVED MAR 10 2008 U.S. Department of Justice
Civil Rights Division

CC:RPL:TAL:par
DJ 166-012-3
2008-0200

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

March 6, 2008

Adam Mitchell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27605-1151

Dear Mr. Mitchell:

This refers to Section 6, North Carolina Session Law 2006-171(SB 350) (2006), which repeals the term limits for the members of the Board of Education, for the Scotland County School District in Scotland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 15, 2008.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Coates", written over a horizontal line.

Christopher Coates
Acting Chief, Voting Section

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services - DMH/DD/SAS intends to amend the rules cited as 10A NCAC 27G .0601 - .0606, .0608 - .0610 and repeal the rule cited as 10A NCAC 27G .0607.

Proposed Effective Date: October 1, 2008

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing no later than April 30, 2008, to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Reason for Proposed Action: The proposed rules are being amended to clarify current Local Management Entity (LME) requirements and responsibilities and to ensure comprehensive oversight of provider agencies and consumer care without unnecessary duplication of effort.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Comments may be submitted to: W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net

Comment period ends: June 16, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$3,000,000)
- ☒ None

CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0600 – AREA AUTHORITY OR COUNTY PROGRAM MONITORING OF FACILITIES AND SERVICES

10A NCAC 27G .0601 SCOPE

(a) This Section governs ~~area authority or county program~~ local management entity (LME) monitoring of the provision of public services in the ~~area authority's or county program's~~ LME's catchment area.

(b) The ~~area authority or county program~~ LME shall monitor the provision of public services in the ~~area authority's or county program's~~ LME's catchment area, ~~pursuant to G.S. 122C-11.~~

(c) The ~~area authority or county program's~~ LME shall develop and implement written policies governing monitoring of the provision of public services that include:

- (1) receiving, reviewing and responding to level II and level III incident reports as set forth in Rules .0603, .0604, and .0605 ~~and .0609~~ of this Section;
- (2) receiving and responding to complaints concerning the provision of public services; as set forth in Rules .0606 ~~and .0607; of this Section;~~
- (3) conducting local monitoring of Categories A and B providers of public services as set forth in Rule .0608 of this Section; and
- (4) analyzing and reporting trends in the information identified in Subparagraph (c)(1) through (c)(3) of this ~~Rule.~~ Rule, as set forth in Rule .0608 of this Section.

(d) As set forth in G.S. 122C-111, monitoring as specified in this Section shall not ~~supercede~~ supersede or duplicate the regulatory authority or functions of the Department of Health and Human Services.

(e) ~~An area authority, county program~~ LME or provider of public services shall exchange information, including confidential information, when necessary to coordinate and carry

out the monitoring functions as set forth in this Section. Sharing of information shall conform to 42 CFR, Part 2 for persons receiving Substance Abuse Services. The exchange of information shall apply as follows:

- (1) ~~as area authority or county program a LME to another area authority or county program; LME;~~
- (2) ~~a LME to a provider of public services; services to an area authority or county program; and~~
- (3) ~~a provider of public services to a LME;~~
- (3)(4) ~~a provider of public services to another provider of public services; services;~~
- (5) ~~a provider of public services to the Department;~~
- (6) ~~a LME to the Department;~~
- (7) ~~the Department to a LME; and~~
- (8) ~~the Department to a provider of public services.~~

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0602 DEFINITIONS

In addition to the terms defined in G.S. 122C-3 and Rules .0103 and .0104 of this Subchapter, the following terms shall apply to the rules in this Section:

- (1) "Clinical home" means the provider of the MH/DD/SA service that writes and maintains the treatment plans for a client. The clinical home includes the demonstrated capability to: have a Qualified Professional in place, to complete and submit authorization forms, consumer admission forms, NC-TOPPS & NC-SNAP, to be the first responder for crisis, and to assure a comprehensive clinical assessment is provided for individuals.
- (4)(2) "Complaint investigation" means the process of determining if an allegation made against a provider concerning the provision of public services is substantiated.
- (2) ~~"Confidential information" means the same as defined in G.S. 122C-3(9). The definition contained in the statute controls regardless of the rule language that follows. At the time of adoption, the definition of confidential information was as follows: information whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.~~

- (4) ~~"Incident" means the same as defined in 10A NCAC 27G .0103(b)(32). The definition contained in the statute controls regardless of the rule language that follows. At the time of adoption, the definition of incident was as follows: any happening which is not consistent with the routine operation of a facility or service or the routine care of a client and that is likely to lead to adverse effects upon a client~~
- (3) "Home LME" means the Local Management Entity responsible for the catchment area where a competent client or in the case of a minor or an incompetent adult, where the legally responsible person has her or his domicile. Domicile is determined as the place where the individual resides with the intent of remaining there for the indeterminate future.
- (4) "Host LME" means the Local Management Entity responsible for the catchment area where the services are provided.
- (3)(5) "ICF/MR" means a facility certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded.
- (5)(6) "Level I incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and does not meet the definition of a level II incident or level ~~II-III~~ incident.
- (6)(7) "Level II incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and results in a threat to a client's health, safety; or a threat to the health, safety of others due to client behavior and does not meet definition of a level III incident.
- (7)(8) Level III incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and results in:
 - (a) a death, sexual assault, or permanent physical or psychological impairment to a client;
 - (b) a substantial risk for death, or permanent physical or psychological impairment to a client;
 - (b)(c) a death, sexual assault, or permanent physical or psychological impairment caused by a client; or
 - (d) a substantial risk death or permanent physical or psychological impairment caused by a client;
 - (e)(e) a threat to public safety of persons caused by a client.
- (8)(9) "Local Monitoring" means area authority or county program LME monitoring of the provision of public services in its catchment area that are provided by Categories A and B providers. The area authority or county program shall collaborate with State Agencies and other local agencies to ensure statewide oversight of Categories A and B providers. public or private providers.

~~(9)~~(10) "Monitor" or "Monitoring" means the interaction between the ~~area authority or county program~~ LME and a provider of public services regarding the functions set forth in Rule .0601(c) of this Section.

~~(10)~~(11) "Provider category" means the type of facility in which a client receives services or resides. The provider category determines the extent of monitoring that a provider receives and is determined as follows:

- (a) Category A - facilities licensed pursuant to G.S. 122C, Article 2, except for hospitals; these hospitals include 24-hour residential facilities, day treatment and outpatient services;
- (b) Category B - G.S. 122C, Article 2, community based providers not requiring State licensure;
- (c) Category C - hospitals, state-operated facilities, nursing homes, adult care homes, family care homes, foster care homes or child care facilities; and
- (d) Category D - individuals providing only outpatient or day services and who are licensed or certified to practice in the State of North Carolina.

~~(11)~~ "Public services" means the same as defined in G.S. 122C-3 (30b). ~~The definition contained in the statute controls regardless of the rule language that follows. At the time of adoption, the definition of public services was as follows: publicly funded mental health, developmental disabilities and substance abuse services, whether provided by public or private providers.~~

(12) "Provider monitoring frequency tool" means an assessment instrument to be used by an LME to determine the frequency and extent of local monitoring for each Category A and Category B provider in the catchment area.

(5) assigning person(s) to be responsible for implementation of the corrections and preventive measures; ~~and~~

~~(6)~~ adhering to confidentiality requirements; and

~~(6)~~(7) maintaining documentation regarding Subparagraphs (a)(1) through ~~(a)(5)~~ (a)(6) of this Rule.

(b) In addition to the requirements set forth in Paragraph (a) of this Rule, ICF-MR providers shall address incidents as required by the federal regulations in 42 CFR Part 483 Subpart I.

~~(b)(c)~~ In addition to the requirements set forth in Paragraph (a) of this Rule, Categories A and B ~~providers~~ providers, excluding ICF-MR providers, shall ~~respond~~ develop and implement written policies governing their response to a level III incident that occurs while the ~~client is in the care of a provider~~ is delivering a billable service or while the client is on the provider's premises ~~by premises. The policies shall require the provider to respond by:~~

- (1) immediately securing the client record by:
 - (A) obtaining the client record;
 - (B) making a photocopy;
 - (C) certifying the copy's completeness; and
 - (D) transferring the copy to ~~a peer~~ an internal review team;

(2) convening a meeting of ~~a peer~~ an internal review team within 24 hours of the incident. ~~The peer internal review team shall:~~ shall consist of individuals who were not involved in the incident and who were not responsible for the client's direct care or with direct professional oversight of the client's services at the time of the incident. The internal review team shall complete all of the activities as follows:

(A) review the copy of the client record as specified in Subparagraph ~~(b)(1)~~ (c)(1) of this Rule;

(B) gather other information needed; ~~and~~
 (C) ~~issue a report concerning the incident to the provider and to the client's home area authority or county program to facilitate the monitoring of services as required by G.S. 122C-111 and other State statutes; and~~ issue written preliminary findings of fact within five working days of the incident. The preliminary findings of fact shall be sent to the LME in whose catchment area the provider is located and to the client's home LME, if different; and

(D) issue a final written report signed by the owner within six months of the incident. The final report shall be sent to the LME in whose catchment area the provider is located and to the client's home LME, if different. The final written report shall address the

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0603 INCIDENT RESPONSE REQUIREMENTS FOR CATEGORIES A AND B PROVIDERS

(a) Categories A and B providers shall ~~respond~~ develop and implement written policies governing their response to level I, II or III incidents. The policies shall require the provider to respond by:

- (1) attending to the health and safety needs of individuals involved in the incident;
- (2) determining the cause of the incident;
- (3) developing and implementing corrective ~~measures;~~ measures according to specified timeframes;
- (4) developing and implementing measures to prevent similar ~~incidents;~~ incidents according to specified timeframes;

- issues identified by the internal review team and shall include all public documents pertinent to the incident. If all documents needed for the report are not available within three months of the incident, the LME may give the provider a three month extension to submit the final report.
- (3) immediately notifying the following:
- (A) ~~the area authority or county program~~ LME responsible for the catchment area where the services are provided pursuant to Rule .0604;
 - (B) ~~the client's legal guardian, as applicable; and the client's home LME, if different;~~
 - (C) ~~any other authorities required by law; the client's clinical home provider, if different from the reporting provider;~~
 - (D) the Department;
 - (E) the client's legal guardian, as applicable; and
 - (F) any other authorities required by law.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0604 INCIDENT REPORTING REQUIREMENTS FOR CATEGORY A AND B PROVIDERS

following information:

- (1) reporting provider contact and identification information;
 - (2) client identification information;
 - (3) type of incident;
 - (4) description of incident;
 - (5) status of the effort to determine the cause of the incident; and
 - (6) other individuals or authorities notified or responding.
- (b) Categories A and B providers shall explain any missing or incomplete information. ~~By the end of the next business day, the provider shall update the report by:~~ The provider shall submit an updated report to all required report recipients by the end of the next business day whenever:
- (1) ~~notifying the area authority or county program when it~~ the provider has reason to believe that information provided in the report may be erroneous, misleading or otherwise unreliable; or
 - (2) ~~submitting to the area authority or county program~~ the provider obtains information

required on the incident form that was previously unavailable.

(c) Categories A and B providers shall submit, upon request by the ~~area authority or county program,~~ LME other information obtained regarding the incident, including:

- (1) hospital records including confidential information;
- (2) reports by other authorities; and
- (3) the provider's response to the incident.

(d) ~~Categories A and B providers shall send a report quarter to the area authority or county program. The report shall be submitted on a form provided by the Secretary via electronic means and shall include summary information as follows:~~ Category A and B providers shall report incidents involving the clients they serve that occur when the provider is not providing a billable service to the client as soon as they learn of the incident.

- (1) ~~medication errors that do not meet the definition of a level II or level III incident;~~
- (2) ~~searches of a client or his living area; and~~
- (3) ~~seizures of client property or property in the possession of a client.~~

(e) ~~Categories A and B providers shall send a copy of all level III incident reports to DFS and DMH/DD/SAS for Category A providers and to DMH/DD/SAS for Category B providers immediately upon receipt of the report. Category A and B providers shall send a copy of all Level III incident reports to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services within 72 hours of becoming aware of the incident. Category A providers shall send a copy of all Level III incidents involving a client death to the Division of Health Service Regulation within 72 hours of becoming aware of the incident. In cases of client death within seven days of use of seclusion or restraint, the provider shall report the death immediately, as required by 10A NCAC 26C .0300 and 10A NCAC 27E .0104(e)(18).~~

(f) Categories A and B providers shall send a report quarterly to the LME responsible for the catchment area where services are provided. The report shall be submitted on a form provided by the Secretary via electronic means and shall include summary information as follows:

- (1) ~~medication errors that do not meet the definition of a level II or level III incident;~~
- (2) ~~restrictive interventions that do not meet the definition of a level II or level III incident;~~
- (3) ~~searches of a client or his living area;~~
- (4) ~~seizures of client property or property in the possession of a client;~~
- (5) ~~the total number of level II and level III incidents that occurred; and~~
- (6) ~~a statement indicating that there have been no reportable incidents whenever no incidents have occurred during the quarter that meet any of the criteria as set forth in Paragraphs (a) and (d) of this Rule and Subparagraphs (1) through (4) of this Paragraph.~~

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0605 LOCAL MANAGEMENT ENTITY MANAGEMENT OF INCIDENTS

Upon learning of a level III incident that occurs while a client is in the care of a provider or on a provider's premises, the ~~area authority or county program~~ LME shall respond by:

- (1) determining the necessary actions have been taken to protect the client's health and safety;
- (2) determining the client records are secured as set forth in Rule .0603 of this Section;
- (3) determining if a meeting of ~~a peer~~ an internal review team is convened within 24 hours as set forth in Rule .0603 of this Section;
- (4) ensuring the client's legal guardian, as applicable, and other authorities are notified as set forth in Rule .0603 of this Section;
- (5) reviewing the ~~peer internal~~ review team's ~~preliminary findings and final~~ preliminary findings and final report; and
- (6) considering any internal review team's request for an extension of up to three months to file the final report, if necessary to gather all relevant documents; and
- ~~(6)(7)~~ conducting local monitoring of the provider according to the requirements as set forth in Rule .0608 of this Section.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0606 REFERRAL OF COMPLAINTS TO LOCAL MANAGEMENT ENTITIES PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS

~~(a) The area authority or county program shall respond to complaints received concerning the provision of public services pertaining to all provider categories. The area authority or county program shall:~~

- ~~(1) establish a written notification procedure to inform each client of the complaint process concerning the provision of public services. The procedure shall include the provision of written information explaining the client's right to contact the area authority or county program, the DMH/DD/SAS, DFS and the Governor's Advocacy Council for Persons with Disabilities;~~
- ~~(2) seek to resolve issues of concern through informal agreement between the client and the provider and document the attempts at resolution; and~~
- ~~(3) develop and implement written policies for receiving, processing, referring, investigating and following up on complaints. The policies shall include:~~
 - ~~(A) safeguards for protecting the identity of the complainant;~~
 - ~~(B) safeguards for protecting the complainant and any staff person from harassment or retaliation;~~
 - ~~(C) procedures to receive and track complaints;~~

- ~~(D) procedures to assist a client in initiating the complaint process;~~
- ~~(E) procedures for encouraging the complainant to communicate with the provider to allow for resolution of the issue;~~
- ~~(F) methods to be used in investigating a complaint;~~
- ~~(G) options to be considered in resolving a complaint, including corrective action and referral to the DMH/DD/SAS, DFS, DSS or other agencies as required; and~~
- ~~(H) procedures governing appeals made by the provider;~~

~~(b) When the area authority or county program refers the complaint to the State or local government agency responsible for the regulation and oversight of the provider, the area authority or county program shall send a letter to the complainant informing them of the referral and the contact person at the agency where the referral was made.~~

~~(c) The area authority or county program shall contact the State or local government agency where the referral was made within 120 days of the date the area authority or county program received the complaint to determine the actions the State or local government agency has taken in response to the complaint. The area authority or county program shall ensure the State or local government agency's response is provided to the complainant and the client's home area authority or county program, if different.~~

(a) The Local Management Entity shall respond to complaints received concerning the provision of public services or client rights pertaining to Categories A and B providers within its catchment area.

(b) When the Local Management Entity is a subject of the complaint, the Local Management Entity shall refer the complaint concerning a Category A provider to the Division of Health Service Regulation, or a Category B provider to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

(c) When the LME receives a complaint concerning a Category A provider, and the complaint is related to a NC administrative rule, the LME shall forward the complaint directly to the Division of Health Service Regulation.

(d) When the LME receives a complaint concerning a community-based ICF-MR, the LME shall forward the complaint directly to the Division of Health Service Regulation. The Division of Health Service Regulation is responsible for the complaint investigation.

(e) When a complaint investigation involving a Category B provider identifies an issue which if substantiated by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services could result in a revocation or suspension of the provider's funding pursuant to 10A NCAC 26C .0501 through 0504, the LME shall document the issue or issues creating the concern and immediately contact the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services will consult with the Local Management Entity, and will then determine which

agency will lead the investigation and which agencies need to be involved. Separate complaint investigations shall not be performed.

(f) When a complaint investigation results in the Local Management Entity initiating action to withdraw endorsement of a provider endorsed by the Local Management Entity, the Local Management Entity shall follow the requirements identified in 10A NCAC 26C .0709.

(g) When facilities employ contract clinical staff to perform clinical functions as a component of the service provided by the provider, the Local Management Entity may only investigate a complaint concerning the contracted clinician if the complaint involves an individual being served in the context of the publicly funded service.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0607 COMPLAINTS PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS EXCLUDING ICF/MR FACILITIES

(a) The area authority or county program shall respond to complaints received concerning the provision of public services pertaining to Categories A and B providers within its catchment area, except ICF/MR facilities.

(b) The area authority or county program shall make contact with the provider when investigating a complaint. The area authority or county program shall state the purpose of the contact and inform the provider that the area authority or county program is in receipt of a complaint concerning the provider.

(c) The area authority or county program shall complete the complaint investigation within 30 days of the date of the receipt of the complaint.

(d) Upon completion of the complaint investigation, the area authority or county program shall submit a report of investigation findings to the complainant, the provider and the client's home area authority or county program, if different. The report shall be submitted within 10 working days of the date of completion of the investigation. The complaint investigation report shall include:

- (1) statements of the allegations or complaints lodged;
- (2) steps taken and information reviewed to reach conclusions about each allegation or complaint;
- (3) conclusions reached regarding each allegation or complaint;
- (4) citations of law and rule pertinent to each allegation or complaint; and
- (5) required action regarding each allegation or complaint.

(e) The provider shall submit a plan of correction to the area authority or county program for each issue requiring correction identified in the report. The plan of correction shall be submitted to the area authority or county program within 10 working days from the date the provider receives the complaint investigation report. The corrective actions shall not exceed 60 days from the date of the complaint investigation report.

(f) The area authority or county program shall review and respond in writing to the provider's plan of correction with

approval or a description of additional required information. The area authority or county program shall respond to the provider within 10 working days of receipt of the plan of correction.

(g) The area authority or county program shall follow up on issues requiring correction in the investigation report no later than 60 days from the date the plan of correction is approved.

(h) The area authority or county program shall refer investigation of a complaint concerning a Category A provider to DFS, or a Category B provider to DMH/DD/SAS when the area authority or county program is a party to the complaint.

(i) The area authority or county program shall provide information regarding the disposition of the complaint to the to the complainant and the client's home area authority or county program, if different, as soon as the investigation is concluded.

(j) The area authority or county program shall maintain copies of complaint investigation, resolution and follow up reports for Category A and B providers for review by the Department of Health and Human Services.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0608 LOCAL MONITORING

(a) The area authority or county program Local Management Entity shall develop and implement written policies governing local monitoring of Categories A and B providers. The written policies shall address:

- (1) The implementation of a Provider Monitoring Frequency Tool provided by the Secretary, which shall determine the frequency and extent of local monitoring based on the LME's level of confidence in each provider as determined by the following:
 - (A) number and severity of level II or level III incidents reported by the provider;
 - (B) the provider's response to the incidents; and
 - (C) the provider's compliance with the reporting requirements as set forth in Rule .0604 of this Section;
 - (D) the number and types of complaints received concerning a provider ;
 - (E) the provider's response to the complaints;
 - (F) the conclusions reached from investigation of the complaints;
 - (G) the results of reviews conducted by the DFS, Division of Health Service Regulation, the DMH/DD/SAS, Division of Mental Health, Developmental Disabilities and Substance Abuse Services or the DSS, the Division of Social Services;
 - (H) compliance with the requirements of the provision of public services;
 - (I) the addition of a new service; and the provider's quality improvement activities as required pursuant to 10A

- NCAC 27G .0201(7), and trends in improvement;
- (J) ~~accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Council on Accreditation (COA), the Council for Accreditation of Rehabilitation Facilities (CARF) or the Council on Quality and Leadership, and the results of the accreditation agencies reviews of the provider compliance with the contract or Memorandum of Agreement with the Local Management Entity;~~
- (K) ~~the addition of a new service; and~~
- (L) ~~accreditation by an accreditation agency approved by the Secretary.~~
- (2) ~~the referral of local monitoring of a Category A provider to DFS or a Category B provider to DMH/DD/SAS based on the following:~~
- (A) ~~local monitoring identifies an issue a State agency is required to review;~~
- (B) ~~a plan of correction resulting from local monitoring is not submitted to the area authority or county program within the designated timeframe;~~
- (C) ~~issues identified in a local monitoring report are not corrected by the provider; or~~
- (D) ~~the area authority or county program is the provider of the service to be monitored; and~~
- (2) The quality of the mental health, developmental disabilities and substance abuse services of all providers through evaluating provider adherence to Division of Medical Assistance (DMA) Clinical Policy Number 8A, including subsequent amendments and editions and services under the Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities (CAP-MR/DD) waiver as approved by the Centers for Medicare and Medicaid Services provided by the provider, and the Division of Mental Health, Developmental Disabilities and Substance Abuse Service Definitions identified as the Division of Mental Health, Developmental Disabilities and Substance Abuse Service Definitions, including subsequent amendments and editions located at <http://www.ncdhhs.gov/mhddsas/>.
- (3) For Category A service providers, when an element of a service definition is also an element of a rule which is monitored by the Division of Health Service Regulation, the LME shall defer to the Division of Health Service Regulation in the monitoring of that component. For Category A providers, the LME is responsible for monitoring those
- components of the service definition which are not found in administrative rule.
- (3)(4) The appeal of the results of local monitoring. If an investigation discloses issues that could affect either the provider's licensure if a Category A provider, or the provider's suspension according to 10A NCAC 26C .0501 through .0504, the Local Management Entity shall refer the provider to either the Division of Health Service Regulation or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services pursuant to Rule .0606 of this Section.
- (b) ~~When local monitoring occurs, the area authority or county program~~ Local Management Entity shall communicate the results to the provider within 10 working days of completion. The communication of the results shall constitute a local monitoring report that includes:
- (1) ~~identification of each service monitored;~~
 - (2) ~~identification of any issues requiring correction; and~~
 - (3) ~~the timelines for implementing the corrections which shall not exceed 60 days from the date the provider receives the local monitoring report.~~
- (c) ~~An area authority or county program~~ A Local Management Entity that conducts the local monitoring of a provider serving another ~~area authority's or county programs~~ Local Management Entity's client shall provide a copy of the local monitoring report to the client's home ~~area authority or county program, upon request,~~ Local Management Entity within 10 days of completion.
- (d) ~~The area authority or county program shall submit a report of local monitoring activities to DFS and DMH/DD/SAS not less than monthly on a form provided by the Secretary via electronic means. The monthly monitoring report shall include:~~
- (1) ~~identification information for providers monitored during the reporting period;~~
 - (2) ~~whether issues requiring correction were identified; and~~
 - (3) ~~an explanation of any uncorrected issues.~~

Authority G.S. 122C-111; 143B-139.1.

10A NCAC 27G .0609 LOCAL MANAGEMENT ENTITY REPORTING REQUIREMENTS

(a) ~~The area authority or county program shall review, not less than quarterly, level II and level III incidents, complaints concerning the provision of public services and local monitoring results as part of its quality improvement process as set forth in Rule .0201 (a)(7) of the Subchapter.~~

(b) ~~The area authority or county program shall provide a report based on the review specified in Paragraph (a) of this Rule. The report shall be submitted to the DMH/DD/SAS, the local Clients Rights Committee and the Governor's Advocacy Council for Persons with Disabilities quarterly on a form provided by the Secretary via electronic means.~~

- (1) ~~summary numbers of the types of complaints, incidents and results of local monitoring;~~

- (2) ~~trends of the types of complaints, level II and level III incidents and local monitoring; and~~
- (3) ~~use of the analyses for improvement of the service system and planning of future monitoring activities~~

(a) As part of its quality improvement process as set forth in Rule .0201(a)(7) of this Subchapter, the LME shall review, not less than quarterly, patterns and trends in:

- (1) level I, level II and level III incidents,
- (2) complaints concerning the provision of public services, and
- (3) local monitoring results gathered pursuant to requirements established in 10A NCAC 27G .0608.

(b) The LME shall provide reports based on the review specified in Paragraph (a) of this Rule. The reports shall be submitted via electronic means to the DMH/DD/SAS quarterly on forms provided by the Secretary. Copies of the reports shall be provided to the LME's area board, local Consumer and Family Advisory Committee, and the local Client Rights Committee.

(c) The reports shall include the following:

- (1) summary numbers of the types of complaints, incidents and results of local monitoring;
- (2) trends identified through analyses of complaints, incidents and local monitoring; and
- (3) use of the analyses for improvement of the service system and planning of future monitoring activities.

(d) The Local Management Entity shall submit a report of local monitoring activities to the DHSR and DMH/DD/SAS for licensed providers and to DMH/DD/SAS for non-licensed facilities not less than monthly via electronic means on a form provided by the Secretary. The monthly monitoring report shall include:

- (1) the number of providers in the catchment area by Confidence Level, per the assignment of confidence levels derived by using the Provider Monitoring Frequency Tool required in 10A NCAC 27G .0608(a)(1);
- (2) Identification information for providers currently assessed at low confidence as derived by using the Provider Monitoring Frequency Tool required in 10 NCAC 27G .0608(a)(1);
- (3) identification information for providers assessed during the report month by Confidence Level, per the assignment of confidence levels described in Subparagraph (a)(2) of this Rule;
- (4) identification information for providers monitored during the reporting month, and for each monitored provider:
 - (A) whether issues requiring correction were identified; and
 - (B) an explanation of any uncorrected issues that were not referred to the Division of Health Service

Regulation or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0610 REQUIREMENTS CONCERNING THE NEED FOR PROTECTIVE SERVICES

(a) If the circumstances identified surrounding an incident, complaint or local monitoring give reasonable cause to believe that a disabled ~~an~~ adult receiving services from a Category A or Category B provider may be abused, neglected or exploited in need of protective services, the area authority or county program shall ensure ~~initiate~~ the procedures outlined in G.S. 108A, Article 6, are initiated.

(b) If the circumstances surrounding an incident, complaint or local monitoring reveal that a child or adolescent may be abused, neglected or exploited and in need of protective services, the ~~area authority or county program~~ Local Management Entity shall ensure the procedures outlined in G.S. 7B, Article 3, are initiated.

Authority G.S. 122C-112.1; 143B-139.1.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03K .0108-.0109, .0208-.0209; 03L .0209; 03M .0518-.0520; 03R .0116-.0117, amend the rules cited as 15A NCAC 03I .0101; 03J .0105, .0202; 03K .0101-.0103, .0105-.0107, .0201, .0304; 03M .0102, .0201, .0204, .0301, .0501, .0504, .0506, .0511-.0513; 03O .0201, .0203, .0210 and repeal the rules cited as 15A NCAC 03M .0401-.0404, .0505, .0514.

Proposed Effective Date: *September 1, 2008*

Public Hearing:

Date: *May 12, 2008*

Time: *7:00 p.m.*

Location: *Roanoke Island Festival Park, One Festival Park, Manteo, NC 27954*

Date: *May 13, 2008*

Time: *7:00 p.m.*

Location: *Pitt Community College, Reddick Bldg., Room 242, 1986 Pitt Tech Road, Winterville, NC 28590*

Date: *May 14, 2008*

Time: *7:00 p.m.*

Location: *DENR Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, NC 28405*

Date: May 15, 2008

Time: 7:00 p.m.

Location: Center for Marine Sciences and Technology, 303 College Circle, Room 306, Morehead City, NC 28557

Reason for Proposed Action:

15A NCAC 03I .0101: This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The amendments will change the closure date for oyster season to March 31 to reflect current management practices, establish a definition for seed oyster management areas used in NC General Statutes and Marine Fisheries Commission Rule, and include shellfish gear typically used for recreational purposes in the list of gears that are an exception to the commercial fishing equipment or gear definition. A proposed amendment will also add a definition for curved fork length in support of a new tuna rule proposed for adoption.

15A NCAC 03J .0105: Improvements are needed for the protection of bycatch species taken in menhaden fishing operations and for the enforcement of menhaden fishery rules. Marine Fisheries Commission Rules 15A NCAC 03M .0401-.0404 are proposed for repeal and information from these rules will be incorporated into 15A NCAC 03J .0105, for clarity. Additional amendments to this rule will add gizzard shad and pinfish to the list of species that may be taken by purse seines.

15A NCAC 03J .0202: This rule was amended several times in the 1990s to address the use of fly nets south of Cape Hatteras. During a revision, the rule was unintentionally changed and has been incorrect since the early 2000s. The proposed amendment to this rule will restore the original intent by allowing 50 percent of the catch in the shrimp and crab trawl fisheries to be finfish plus allow an additional 300 pounds of kingfish south of Bogue Inlet.

15A NCAC 03K .0101: This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The proposed change will remove the portion of the rule concerning tagging of containers of shellfish so it can be codified in a separate rule, for clarity.

15A NCAC 03K .0102: This rule is proposed for amendment to correct a cross-reference to a related rule that is listed incorrectly.

15A NCAC 03K .0103: This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The proposed change will remove the portion of the rule concerning seed oyster management areas so it can be codified in a separate rule, for clarity.

15A NCAC 03K .0105: This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The proposed changes will move the recreational harvest rules for blue crabs to the crab section of the rule book, clarify that the Sunday exception for oyster and clam harvest is only for recreational purposes, clarify that commercial harvest of oysters and clams from shellfish leases and franchises is allowed on Sundays, and establish recreational harvest limits for other mollusks in accordance with statutory provisions.

15A NCAC 03K .0106: This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery

Management Plans. The proposed change will clarify that oysters and clams taken from shellfish leases and franchises are exempt from the Sunday unloading prohibition.

15A NCAC 03K .0107: This rule is proposed for amendment to correct a cross-reference to a related rule that is listed incorrectly.

15A NCAC 03K .0108: This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will only allow mechanical gear for shellfish harvesting in areas where it is already allowed for oysters, clams, scallops and rangia clams. It is currently not clear where mechanical harvest gear can be used for species other than oysters, clams, scallops and oysters.

15A NCAC 03K .0109: This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will establish requirements for the tagging of shellfish containers as a separate rule from the prohibited activities rule, and extend that requirement to shellfish from out-of-state sources. The proposed changes will also align the definition of commercial harvest of shellfish with that of other species in G.S. 113-168.

15A NCAC 03K .0201: This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. Amendments to this rule will change the closure date for oyster season to March 31 to reflect current management practices. Proposed changes will also clarify the Fisheries Director's authority to set the oyster season between specified dates and for recreational or commercial harvest.

15A NCAC 03K .0208: This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will separate seed oyster management areas from shellfish management areas and place seed oyster rules in the oyster section of the rulebook. There will not be any changes in the provisions of the rules.

15A NCAC 03K .0209: This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will create designated oyster sanctuaries where no bottom disturbing gear or oyster or clam harvest is allowed.

15A NCAC 03K .0304: This rule is proposed for amendment to correct a cross-reference to a related rule that is listed incorrectly.

15A NCAC 03L .0209: This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will properly locate the recreational harvest rules for blue crabs in the crab section of the North Carolina Fisheries Rules for Coastal Waters rule book.

15A NCAC 03M .0102: Improvements are needed for the protection of bycatch species taken in menhaden fishing operations and for the enforcement of menhaden fishery rules. Proposed amendments to this rule include the removal of reference to trash or scrap fish, clarification that finfish must meet minimum size and possession limits, clarification that up to 5,000 pounds may be sold to bait dealers or dehydrating plants, and clarification that purse seine species are exempt from this 5,000 pound quantity requirement.

15A NCAC 03M .0201: This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery

Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.

15A NCAC 03M .0204: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0301: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0401-.0404: *Improvements are needed for the protection of bycatch species taken in menhaden fishing operations and for the enforcement of menhaden fishery rules. These rules are proposed for repeal and information from these rules will be incorporated into Marine Fisheries Commission Rule 15A NCAC 03J .0105, Purse Seines Prohibited, for clarity.*

15A NCAC 03M .0501: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0504: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0505: *As recommended by the NC Interjurisdictional Fishery Management Plan, this rule is proposed for repeal because all existing text conferring proclamation authority to the Fisheries Director should be deleted in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0506: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0511: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. The proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0512: *As recommended by the NC Interjurisdictional Fishery Management Plan, amendments are proposed to this rule to broaden the types of actions that may be implemented by proclamation, and also to correct a General Statute reference.*

15A NCAC 03M .0513: *This rule is proposed for amendment as recommended by the NC Interjurisdictional Fishery Management Plan. A proposed change will delete existing text that confers proclamation authority to the Fisheries Director, in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority. Proposed amendments will also move rules for shad to a separate rule in the North Carolina Fisheries Rules for Coastal Waters rule book.*

15A NCAC 03M .0514: *As recommended by the NC Interjurisdictional Fishery Management Plan, this rule is proposed for repeal because all existing text conferring proclamation authority to the Fisheries Director should be deleted in order to consistently use the broader authority provided by the proposed amended Marine Fisheries Rule 15A NCAC 03M .0512. This will avoid conflict with species rules that may have different parameters for the utilization of proclamation authority.*

15A NCAC 03M .0518: *This rule is proposed for adoption to give proclamation authority for the management of kingfish stocks to the Fisheries Director, as recommended by the Kingfish Fishery Management Plan. The use of proclamation authority with management triggers will provide the flexibility to initiate management actions to maintain a sustainable harvest, if necessary.*

15A NCAC 03M .0519: *This rule is proposed for adoption as recommended by the NC Interjurisdictional Fishery Management Plan. This rule will separate shad from river herring in the North Carolina Fisheries Rules for Coastal Waters rule book by creating a separate rule for shad. There will not be any changes in the provisions of the rules.*

15A NCAC 03M .0520: *In the interest of promoting effective conservation of the tuna resource, the proposed rule will add a*

new minimum size and creel limit for certain species of tuna that can be enforced by state marine patrol officers in state waters.

15A NCAC 03O .0201: *This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The proposed rule amendments will change the time period for meeting shellfish production requirements to meet the term of the shellfish lease contract, remove the opportunity for applicants to justify exceeding the acreage allowed in lease application guidelines, set a maximum amount of lease acreage per application regardless of species under cultivation, and require current lease and franchise holders to meet shellfish production requirements prior to submitting applications for additional acreage. The amendments will provide for better enforcement of rules and more efficient use of public bottomlands.*

15A NCAC 03O .0203: *This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The proposed change will require the inclusion of latitude and longitude coordinates in the survey requirements for shellfish leases. This information will aid in enforcement and compliance with shellfish lease and franchise marking requirements.*

15A NCAC 03O .0210: *This rule is proposed for amendment as recommended by the NC Oyster and Hard Clam Fishery Management Plans. The proposed change will correct a reference modified by the amendment of 15A NCAC 03O .0201.*

15A NCAC 03R .0116: *This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will identify seed oyster management areas that have already been designated pursuant to G.S. 113-203, to allow for proper management and protection of resources.*

15A NCAC 03R .0117: *This rule is proposed for adoption as recommended by the NC Oyster and Hard Clam Fishery Management Plans. This rule will place oyster sanctuaries currently designated under proclamation authority in rule.*

Procedure by which a person can object to the agency on a proposed rule: *If you have any objections to the proposed Rules, please forward a typed or handwritten letter indicating your specific reasons for your objections to the following address: Division of Marine Fisheries, Catherine Blum, P.O. Box 769, Morehead City, NC 28557*

Comments may be submitted to: *Catherine Blum, P.O. Box 769, Morehead City, NC 28557, phone (252)808-8013*

Comment period ends: *June 16, 2008*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the*

Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ **State**
- ☐ **Local**
- ☐ **Substantive (≥\$3,000,000)**
- ☒ **None**

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

~~(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.~~

~~(b) The following additional terms are hereby defined:~~

(a) Enforcement and management terms:

~~(b)(41)(1)~~ Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.

~~(b)(30)(2)~~ Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education.

~~(b)(40)(3)~~ Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.

~~(b)(17)(4)~~ Length of finfish.

(A) Curved fork length is determined by measuring along a line, tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.

~~(b)(17)(B)(B)~~ Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork ~~(b)(17)(C)~~ Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

~~(b)(17)(A)(C)~~ Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.

~~(b)(39)(5)~~ Recreational Possession Limit. Includes restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

~~(b)(42)(6)~~ Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.

~~(b)(46)(7)~~ Regular Closed Oyster Season. ~~May 15~~ March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.

(8) Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.

(b) Fishing Activities:

~~(b)(19)(1)~~ Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:

~~(b)(19)(B)(A)~~ food,

~~(b)(19)(A)(B)~~ predator protection,

~~(b)(19)(D)(C)~~ salinity, or

~~(b)(19)(E)(D)~~ temperature controls—utilizing technology not found in the natural environment. controls, or

~~(b)(19)(C)(E)~~ water circulation, utilizing technology not found in the natural environment.

~~(b)(40)(2)~~ Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.

~~(b)(50)(3)~~ Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:

~~(b)(50)(B)(A)~~ food,

~~(b)(50)(A)(B)~~ predator protection,

~~(b)(50)(D)(C)~~ salinity, or

~~(b)(50)(E)(D)~~ temperature controls—utilizing technology not found in the natural environment. controls, or

~~(b)(50)(C)(E)~~ water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.

~~(b)(15)(4)~~ Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.

~~(b)(34)(5)~~ Long Haul Operations. ~~A Fishing~~ a seine towed between two boats.

~~(b)(46)(6)~~ Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite white, pink, or red-line or rim on the outer edge of the back fin or flipper.

~~(b)(4)(7)~~ Possess. Any actual or constructive holding whether under claim of ownership or not.

~~(b)(38)(8)~~ Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.

~~(b)(27)(9)~~ Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

~~(b)(28)(10)~~ Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

~~(b)(26)(11)~~ Shellfish production on leases and franchises:

~~(b)(26)(A)(A)~~ The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.

~~(b)(26)(B)(B)~~ The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

~~(b)(32)(12)~~ Swipe Net Operations. ~~A Fishing~~ a seine towed by one boat.

~~(b)(5)(13)~~ Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

~~(b)(6)(14)~~ Use. Employ, set, operate, or permit to be operated or employed.

(c) Gear:

~~(b)(33)(1)~~ Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.

~~(b)(44)(2)~~ Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.

~~(b)(1)(3)~~ Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:

~~(b)(1)(G)(A)~~ Cast Nets;

~~(b)(1)(B)(B)~~ Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;

~~(b)(1)(D)(C)~~ ~~A dip net~~ Dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;

~~(b)(1)(H)(D)~~ Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; ~~and~~

(E) Hand operated rakes or hand operated tongs no more than 12 inches wide and weighing no more than six pounds, and taking shellfish without the use of harvest tools;

~~(b)(1)(E)(F)~~ Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;

~~(b)(1)(F)(G)~~ ~~A landing net~~ Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;

~~(b)(1)(I)(H)~~ ~~Up to two minnow traps.~~ Minnow traps when no more than two are in use;

~~(b)(1)(A)(I)~~ Seines less than 30 feet in length;

~~(b)(1)(C)(J)~~ Spears, Hawaiian slings or similar devices, which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar ~~means;~~ means.

~~(b)(12)(4)~~ Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

~~(b)(2)(5)~~ Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

~~(b)(51)(6)~~ ~~Fyke Net.~~ An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing,

except for the openings for fish passage into or out of the net (funnel area).

~~(b)(8)(7)~~ Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.

~~(b)(52)(8)~~ Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

~~(b)(13)(9)~~ Mechanical methods for clamming. Includes dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.

~~(b)(14)(10)~~ Mechanical methods for oystering. Includes dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.

~~(b)(3)(11)~~ Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.

~~(b)(29)(12)~~ Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.

~~(b)(7)(13)~~ Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.

~~(b)(9)(14)~~ Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.

(d) Habitat:

~~(b)(25)(1)~~ Coral:

~~(b)(25)(A)(A)~~ Fire corals and hydrocorals (Class Hydrozoa);

~~(b)(25)(B)(B)~~ Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);

~~(b)(25)(C)(C)~~ Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia); (Class Anthozoa,

Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).

- (i) ~~Sea fans (*Gorgonia* sp.);~~
- (ii) ~~Sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.);~~
- (iii) ~~Sea pansies (*Renilla* sp.).~~

~~(b)(20)(2)~~ Fish habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all coastal fishing waters, as determined through marine and estuarine survey sampling, include:

~~(b)(20)(D)(A)~~ Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.

~~(b)(20)(C)(B)~~ Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

~~(b)(20)(A)(C)~~ Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.

~~(b)(20)(E)(D)~~ Nursery areas are those areas in which for reasons such as food, cover, bottom type, salinity, temperature and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size which have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.

~~(b)(20)(B)(E)~~ Shellfish producing habitats are those areas in which shellfish, such as clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

~~(b)(20)(F)(F)~~ Strategic Habitat Areas are specific locations of individual fish habitats or systems of habitats that have been identified to provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.

~~(b)(24)(3)~~ Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.

~~(b)(24)(4)~~ Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). ~~For example, such living~~ Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include:

~~(A) Animals:~~

- ~~(i) Sponges (*Phylum Porifera*);~~
- ~~(ii) Hard and Soft Corals, Sea Anemones (*Phylum Cnidaria*):~~
 - ~~(I) Fire corals (*Class Hydrozoa*);~~
 - ~~(II) Gorgonians, whip corals, sea pansies, anemones;~~

- ~~Solenastrea~~ (Class ~~Anthozoa~~);
- (iii) ~~Bryozoans~~ (Phylum ~~Bryozoa~~);
- (iv) ~~Tube Worms~~ (Phylum ~~Annelida~~);
 - (I) ~~Fan worms~~ (~~Sabellidae~~);
 - (II) ~~Feather duster and Christmas tree worms~~ (~~Serpulidae~~);
 - (III) ~~Sand castle worms~~ (~~Sabellaridae~~);
- (v) ~~Mussel banks~~ (Phylum ~~Mollusca~~; ~~Gastropoda~~);
- (vi) ~~Colonial barnacles~~ (~~Arthropoda~~; ~~Crustacea~~; ~~Megabalanus sp.~~);
- (B) ~~Plants~~:
 - (i) ~~Coralline algae~~ (Division ~~Rhodophyta~~);
 - (ii) ~~Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp.~~ (Division ~~Chlorophyta~~);
 - (iii) ~~Sargassum sp., Dictyopteris sp., Zonaria sp.~~ (Division ~~Phaeophyta~~);
- (A) Coralline algae (Division Rhodophyta);
- (B) Acetabularia sp., mermaid's fan and cups (Udotea sp.), watercress (Halimeda sp.), green feather, green grape algae (Caulerpa sp.) (Division Chlorophyta);
- (C) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta);
- (D) Sponges (Phylum Porifera);
- (E) Hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
- (F) Bryozoans (Phylum Bryozoa);
- (G) Tube worms (Phylum Annelida), fan worms (Sabellidae); feather duster and Christmas tree worms (Serpulidae), and sand castle worms (Sabellaridae);
- (H) Mussel banks (Phylum Mollusca; Gastropoda);
- (I) Acorn barnacles (Arthropoda; Crustacea; Semibalanus sp.);
- (e) Licenses, permits, leases and franchises, and record keeping:
 - (b)(47)(1) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted

under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.

- ~~(b)(49)(2)~~ Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- ~~(b)(53)(3)~~ For Hire Vessel. As defined by G.S. 113-174 when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
- ~~(b)(37)(4)~~ Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- ~~(b)(44)(5)~~ Land:
 - ~~(b)(44)(B)(A)~~ For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - ~~(b)(44)(A)(B)~~ For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
 - ~~(b)(44)(C)(C)~~ For recreational fishing operations, when fish are retained in possession by the fisherman.
- ~~(b)(48)(6)~~ Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- ~~(b)(45)(7)~~ Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- ~~(b)(35)(8)~~ New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- ~~(b)(22)(9)~~ North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- ~~(b)(43)(10)~~ Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- ~~(b)(34)(11)~~ Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business

operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.

~~(b)(36)~~(12)Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

~~(b)(23)~~(13)Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.

~~(b)(48)~~(14)Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

Authority G.S. 113-134; 113-174; 143B-289.52.

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0105 PURSE SEINES

(a) It is unlawful to use purse seines except for the taking of ~~menhaden or menhaden~~, Atlantic thread herring, herring, gizzard shad or pinfish.

(b) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish with a purse seine in violation of any of the following limitations:

- (1) In the Atlantic Ocean within an area described:
 - (A) In 15A NCAC 03R .0111, and
 - (B) By Session Law 2007-320.
- (2) Except as provided in Subparagraph (5) of this Paragraph, between January 16 and May 14 in:
 - (A) Internal waters, and
 - (B) Atlantic Ocean within one mile of shore.
- (3) Between January 16 and March 31 in Core Sound.
- (4) In internal waters except in:
 - (A) Pamlico Sound,
 - (B) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek,
 - (C) Neuse River east of a line from Wilkinson Point to Cherry Point,
 - (D) Adams Creek,
 - (E) Core Sound and its tributaries,
 - (F) Back Sound, the Straits, and North river,
 - (G) Newport River,
 - (H) North River, and
 - (I) Bogue Sound.

(5) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (4) of this Paragraph between April 1 and May 14, and may impose any or all of the following restrictions:

- (A) Specify means and methods by area which may be employed in the taking;
- (B) Limit the quantity; and
- (C) Require submission of statistical and biological data.

(c) Menhaden, Atlantic thread herring, gizzard shad or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law 2007-320 and except as prohibited below:

- (1) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.
- (2) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between the hours of sunrise and sunset on the following official holidays:
 - (A) Memorial Day;
 - (B) Fourth of July, when the Fourth of July falls on any calendar day between sunrise Friday and sunset Monday; and
 - (C) Labor Day.

(d) It is unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:

- (1) Immediately notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries of such spill; and
- (2) Report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of spill clean-up on the circumstances associated with each spill and costs of its clean-up.

Authority G.S. 113-134; 113-182; 143B-289.52.

SECTION .0200 - NET RULES, SPECIFIC AREAS

15A NCAC 03J .0202 ATLANTIC OCEAN

In the Atlantic Ocean:

- (1) It is unlawful to use nets from June 15 through August 15 in the waters of Masonboro Inlet or in the ocean within 300 yards of the beach between Masonboro Inlet and a line running southeasterly through the water tank 34° 13.1500'N - 77° 47.300' W on the northern end of Wrightsville Beach, a distance of 4400 yards parallel with the beach.

- (2) It is unlawful to use trawls within one-half mile of the beach between the Virginia line and Oregon Inlet.
- (3) It is unlawful to use a trawl with a mesh length less than four inches in the main body, three inches in the extension, and one and three-fourths inches in the cod end or tail bag inshore of a line beginning on the western side of Beaufort Inlet Channel at a point 34° 41.3000' N - 76° 40.1333' W; running westerly parallel to and one-half miles from the shore off Salter Path to a point 34° 40.5333' N - 76° 53.7500' W.
- (4) It is unlawful to use trawl nets, including flynets, southwest of the 9960-Y chain 40250 LORAN C line (running offshore in a southeasterly direction) from Cape Hatteras to the North Carolina/South Carolina line except:
 - (a) Shrimp trawls as defined in 15A NCAC 03L .0103;
 - (b) Crab trawls as defined in 15A NCAC 03L .0202; or
 - (c) Flounder trawls as defined in 15A NCAC 03M .0503.
- ~~(5) Finfish taken with shrimp or crab trawls:~~
 - ~~(a) It is unlawful to possess finfish (including pursuant to 15A NCAC 03M .0102) incidental to shrimp or crab trawl operations from December 1 through March 31 unless the weight of the combined catch of shrimp and crabs exceeds the weight of finfish except as provided in Sub-Item (5)(b) of this Rule;~~
 - ~~(b) It is unlawful to possess more than 300 pounds of kingfish (*Menticirrhus*, sp.) taken south of Bogue Inlet regardless of the amount of shrimp, crabs or finfish taken.~~
- (5) It is unlawful to possess finfish (including pursuant to 15A NCAC 03M .0102) incidental to shrimp or crab trawl operations from December 1 through March 31 unless the weight of the combined catch of shrimp and crabs exceeds the weight of finfish, except an additional 300 pounds of kingfish (*Menticirrhus*, spp.) may be taken south of Bogue Inlet.
- (6) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.
- (7) It is unlawful to use gill nets in the Atlantic Ocean with a mesh length greater than seven inches from April 15 through December 15.
- (8) It is unlawful to use shrimp trawls in all waters west of a line beginning at the southeastern tip

of Baldhead Island at a point 33° 50.4833' N - 77° 57.4667' W; running southerly in the Atlantic Ocean to a point 33° 46.2667' N - 77° 56.4000' W; from 9:00 P.M. through 5:00 A.M.

Authority G.S. 113-134; 113-182; 143B-289.52.

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0101 PROHIBITED SHELLFISH AREAS/ACTIVITIES

(a) It is unlawful to possess, sell, or take oysters, clams or mussels from areas which have been designated as prohibited (polluted) by proclamation by the Fisheries Director except as provided in 15A NCAC 03K .0103, .0104, .0107, and .0401. The Fisheries Director shall issue such proclamations upon notice by the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Morehead City, NC 28557; (252) 726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.

(c) It is unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina.

~~(d) It is unlawful to possess or sell oysters, clams, or mussels taken from the waters of North Carolina except as provided in G. S. 113-169.2 (i) without a harvest tag affixed to each container of oysters, clams or mussels. Harvest tags shall be affixed by the harvester and shall meet the following criteria:~~

~~(1) Tags shall be identified as harvest tags. They shall be durable for at least 90 days, water resistant, and a minimum of two and five eighths inches by five and one fourth inches in size.~~

~~(2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. Bulk shipments in one container and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish dealers may use only their dealers tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.~~

- (3) ~~Tags shall contain legible information arranged in the specific order as follows:~~
- (A) ~~The harvester's name, address and shellfish license or standard or retired standard commercial fishing license with shellfish endorsement number.~~
 - (B) ~~The date of harvest.~~
 - (C) ~~The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.~~
 - (D) ~~Type and quantity of shellfish.~~
 - (E) ~~The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".~~

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52.

15A NCAC 03K .0102 PROHIBITED RAKES

It is unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

- (1) oysters or scallops;
- (2) clams in any live oyster bed, in any established bed of submerged aquatic vegetation as described in ~~15A NCAC 03I .0101(b)(20)~~, 15A NCAC 03I .0101, or in any established bed of salt water cordgrass (*Spartina alterniflora*).

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:

- (1) conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
- (2) shellfish populations or shellfish enhancement projects that may:
 - (A) produce commercial quantities of shellfish at 10 bushels or more per acre;
 - (B) produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or
 - (C) serve as sanctuaries to increase spawning and disease resistance or to prevent predation.

(b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall

have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.

(c) It is unlawful to take shellfish from any Shellfish Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed.

~~(d) It is unlawful to take oysters from Seed Management Areas for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

~~(a) It is unlawful for individuals who harvest blue crabs for a recreational purpose to possess more than 50 blue crabs per person per day not to exceed 100 blue crabs per vessel per day.~~

~~(b) It is unlawful to exceed the daily vessel limits specified in G.S. 113-169.2 without each person having ready at hand a valid standard or retired standard commercial fishing license with shellfish endorsement or a shellfish license.~~

~~(c)~~(a) It is unlawful to take oysters or clams from public bottoms on Sundays ~~Sundays~~, and scallops from public bottoms on Saturdays and Sundays except:

- (1) during open seasons, and
- (2) in accordance with limits outlined in G.S. 113-169.2, for recreational purposes.

(b) It is unlawful to possess, for recreational purposes, more than:

- (1) 10 conchs or whelks per person per day, not to exceed 20 conchs or whelks per vessel per day, and
- (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per day, and
- (3) 100 clams per person per day, not to exceed 200 clams per vessel per day.

Authority G.S. 113-134; 113-169.2; 113-182; 143B-289.52.

15A NCAC 03K .0106 TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT

(a) It is unlawful to take oysters or clams between the hours of sunset and sunrise on any day.

(b) It is unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on Sunday or between sunset and sunrise on any day except that in New Hanover, Pender and Brunswick Counties, oysters and clams may be unloaded until two hours after sunset. Oysters and clams taken on Sunday from public bottom under the provisions of 15A NCAC 03K .0105 or from shellfish leases and franchises

pursuant to G.S. 113-208 are exempt from the Sunday unloading prohibition.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03K .0107 DEPURATION OF SHELLFISH

(a) It is unlawful to take clams or oysters from the public or private prohibited (polluted) waters of the state for the purpose of depuration except when the harvest will utilize shellfish that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health. For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.

(b) The Fisheries Director, may, by proclamation, impose any or all of the following restrictions on the harvest of clams or oysters for depuration:

- (1) Specify species;
- (2) Specify areas except harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) Specify harvest days;
- (4) Specify time period;
- (5) Specify quantity or size;
- (6) Specify harvest methods;
- (7) Specify record keeping requirements.

(c) Depuration permits:

- (1) It is unlawful for individuals to harvest clams or oysters from prohibited (polluted) waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of Marine Fisheries and Division of Environmental Health setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina Clam or Oyster Dealers only. Permittees and designees harvesting under Depuration Permits must have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License.
- (2) In addition to information required in ~~15A NCAC 03M .0501~~, 15A NCAC 03O .0501, the permit application shall provide the name, address, location and telephone number of the depuration operation where the shellfish will be depurated.
- (3) Clam or Oyster Dealers desiring to obtain prohibited (polluted) clams or oysters for depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.

(d) Transport of clams or oysters for depuration:

- (1) Clams or oysters harvested from prohibited (polluted) waters for depuration in a depuration operation located within the State of North Carolina shall be transported under

the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health.

- (2) Clams or oysters harvested from prohibited (polluted) waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health.

(e) It is unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.

(f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

Authority G.S. 113-134; 113-182; 113-201; 143B-289.52.

15A NCAC 03K .0108 DREDGES/MECHANICAL METHODS PROHIBITED

(a) It unlawful to use mechanical methods, except mechanical methods for oystering and clamming defined in 15A NCAC 03I .0101, to take shellfish.

(b) It is unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in 15A NCAC 03K .0201, .0204, .0302, .0304, .0404, .0501, and .0503:

- (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*);
- (2) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Oysters and Clams on Shellfish Leases and Franchises;
- (3) in areas designated in 15A NCAC 03K .0204 and 03R .0103; and
- (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and 03K .0201, .0302, .0404, .0501, and .0503.

Authority G.S. 113-134; 113-201; 143B-289.52.

15A NCAC 03K .0109 SHELLFISH HARVESTER AND DEALER TAGS

It is unlawful to possess or sell oysters, clams, or mussels in a commercial fishing operation without a harvest tag affixed to each container of oysters, clams or mussels. Tags shall be affixed by the harvester or dealer and shall meet the following criteria:

- (1) Tags shall be identified as harvest tags. They shall be durable for at least 90 days, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size.

- (2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. A harvester or dealer tag shall be securely fastened to the outside of each container at a dealer location except, bulk shipments of shellfish in one container and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) Tags shall be attached to all shellfish stored at a dealer location.
- (4) Tags shall contain legible information arranged in the specific order as follows:
 - (a) The harvester's name, address and shellfish license or standard or retired standard commercial fishing license with shellfish endorsement number.
 - (b) The date of harvest.
 - (c) The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.
 - (d) Type and quantity of shellfish.
 - (e) The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52.

SECTION .0200 - OYSTERS

15A NCAC 03K .0201 OPEN SEASON AND POSSESSION LIMIT

It is unlawful to ~~take, buy, sell, take~~ or possess ~~any~~ oysters from public bottoms except ~~during the open season~~ from October 15 through May 15. ~~March 31. During any open season that may be allowed within the time periods stated herein, the~~ The Fisheries Director may, by proclamation, close and open the season within the time period stated herein or close and open any of the various waters to the taking of oysters depending on the need to protect small oysters and their habitat, the amount of saleable oysters available for harvest, the number of days harvest is prevented due to unsatisfactory bacteriological samples and weather conditions, and the need to prevent loss of oysters due to parasitic infections and thereby reduce the transmission of parasites to uninfected oysters or other variable conditions and may impose any or all of the following ~~restrictions:~~ restrictions on commercial and recreational oyster harvest:

- (1) Specify days of the week harvesting will be allowed;
- (2) Specify areas;
- (3) Specify means and methods which may be employed in the taking;
- (4) Specify time period;
- (5) Specify the quantity, but shall not exceed possession of more than 50 bushels ~~aboard a vessel; in a commercial fishing operation;~~ and
- (6) Specify the minimum size limit by shell length, but not less than 2 1/2 inches.

Authority G.S. 113-134; 113-182; 113-201; 113-221; 143B-289.52.

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

- (a) It is unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.
- (b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

Authority G.S. 113-134; 113-182; 113-203; 113-221; 143B-289.52.

15A NCAC 03K .0209 OYSTER SANCTUARIES

- (a) It is unlawful to use a trawl net, long haul seine, or swipe net in Oyster Sanctuaries designated in 15A NCAC 03R .0117. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.
- (b) It is unlawful to use mechanical methods for oystering or clamming in, or to take oysters or clams from, Oyster Sanctuaries designated in 15A NCAC 03R .0117.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0304 PROHIBITED TAKING

- (a) It is unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, except as provided in 15A NCAC 03K .0302 and .0303. Regardless of the areas which may be opened, it is unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as described in ~~15A NCAC 03I .0101(b)(20)~~ 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*).

(b) It is unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick/deflector plates normally used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with 15A NCAC 03K .0302(a). A period of 14 days before and after the season as specified by proclamation will be allowed for the installation and removal of kick/deflector plates and clam trawls or cages. Vessels with permits for activities provided for in 15A NCAC 03K .0104, .0107, .0303(a), and .0401 shall be exempt from this Rule during the times such activities are permitted.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 03L - SHRIMP, CRABS, AND LOBSTER

SECTION .0200 – CRABS

15A NCAC 03L .0209 RECREATIONAL HARVEST OF CRABS

It is unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day, for recreational purposes.

Authority G.S. 113-134; 113-182; 143B-289.52.

SUBCHAPTER 03M - FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0102 UNMARKETABLE FINFISH

(a) It is unlawful to land ~~or dispose of finfish as trash or scrap fish~~ finfish if in violation of minimum size or possession limits established by rule or proclamation.

(b) It is unlawful to land ~~or dispose of finfish as trash or scrap fish~~ finfish taken in connection with legitimate commercial fishing operations which are unmarketable as individual food fish finfish by reason of size, except that a quantity not exceeding 5,000 pounds per vessel per day may be ~~be sold to a dealer that is licensed under G.S. 113-169.3 (f) (6), (7) and (8).~~

(1) ~~Landed and sold to a licensed finfish dealer, a licensed fish dehydrating plant or licensed finfish processing plant, and~~

(2) ~~Purchased or accepted by a licensed finfish dealer, a licensed fish dehydrating plant or licensed finfish processor.~~

(c) Menhaden, Atlantic thread herring, and gizzard ~~shad~~ shad, and pinfish are exempt from this Rule.

Authority G.S. 113-134; 113-185; 143B-289.52.

SECTION .0200 - STRIPED BASS

15A NCAC 03M .0201 GENERAL

(a) Striped bass is defined as striped bass (*Morone saxatilis*) and its hybrids taken in coastal and joint waters.

(b) Hook-and-line fishing equipment is not commercial fishing equipment in the striped bass fishery. It is unlawful to sell or

purchase striped bass taken by hook-and-line. Striped bass taken legally with hook-and-line may be possessed and transported.

(c) It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).

(d) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass ~~except~~ except during any:

(1) ~~during the open striped bass season in established for internal coastal waters established in 15A NCAC 03M .0202; waters;~~

(2) ~~during any open striped bass season established for the Atlantic Ocean in 15A NCAC 03M .0204; Ocean; or~~

(3) ~~during any open striped bass season of another state without possession of the following:~~

(A) A bill of lading as described in 15A NCAC 03I .0114;

(B) A numbered, state-issued tag from the State of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.

(e) The management units and recreational fishery management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03M .0204 SEASON, SIZE AND HARVEST LIMIT: ATLANTIC OCEAN

~~(a) It is unlawful to possess striped bass taken from the Atlantic Ocean less than the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Management Plan for striped bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Management Plan.~~

~~(b) It is unlawful to buy, sell, transport, or possess striped bass from the Atlantic Ocean by any means except that the Fisheries Director may establish an open season at any time, and is further empowered to impose any or all of the following restrictions:~~

~~(1) Specify number of days;~~

~~(2) Specify areas;~~

~~(3) Specify means and methods which may be employed in the taking;~~

~~(4) Specify time period;~~

~~(5) Limit the quantity, both commercially and recreationally, and~~

~~(6) Provide for biological sampling of fish harvested.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0300 - SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) Spanish Mackerel:

~~(1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for Spanish mackerel:~~

- ~~(A) Specify areas.~~
- ~~(B) Specify seasons.~~
- ~~(C) Specify quantity.~~
- ~~(D) Specify means/methods.~~
- ~~(E) Specify size.~~

~~(2)(1)~~ It is unlawful to possess Spanish mackerel less than 12 inches fork length.

~~(3)(2)~~ It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.

~~(4)(3)~~ It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.

(b) King mackerel:

~~(1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for king mackerel:~~

- ~~(A) Specify areas.~~
- ~~(B) Specify seasons.~~
- ~~(C) Specify quantity.~~
- ~~(D) Specify means/methods.~~
- ~~(E) Specify size.~~

~~(2)(1)~~ It is unlawful to possess king mackerel less than 24 inches fork length.

~~(3)(2)~~ It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.

~~(4)(3)~~ It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:

- (A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or
- (B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.

~~(5)(4)~~ It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).

(c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the king mackerel and Spanish mackerel possession limits established in Subparagraphs ~~(a)(3)~~ (a)(2) and ~~(b)(3)~~ (b)(2) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0400 - MENHADEN AND ATLANTIC THREAD HERRING

15A NCAC 03M .0401 SEASON AND AREAS

~~(a) It is unlawful to take menhaden or Atlantic thread herring with a purse seine in violation of any of the following limitations:~~

- ~~(1) In the Atlantic Ocean within an area described in 15A NCAC 3R .0111.~~
- ~~(2) Between January 16 and May 14 in internal waters and in the Atlantic Ocean within one mile of shore.~~
- ~~(3) Between January 16 and March 31 in Core Sound.~~
- ~~(4) In internal waters except in:~~
 - ~~(A) Pamlico Sound,~~
 - ~~(B) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek,~~
 - ~~(C) Neuse River east of a line from Wilkinson Point to Cherry Point,~~
 - ~~(D) Adams Creek,~~
 - ~~(E) Core Sound and its tributaries,~~
 - ~~(F) Back Sound, the Straits, and North River,~~
 - ~~(G) Newport River,~~
 - ~~(H) North River,~~
 - ~~(I) Newport River, and~~
 - ~~(J) Bogue Sound.~~

~~(5) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (4) of this Rule between April 1 and May 14, and may impose any or all of the following restrictions:~~

- ~~(A) Specify means and methods by area which may be employed in the taking;~~
- ~~(B) Limit the quantity; and~~
- ~~(C) Require submission of statistical and biological data.~~

~~(b) Menhaden and Atlantic thread herring may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as prohibited in 15A NCAC 3M .0403.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0402 FOODFISH PROHIBITED

~~It is unlawful to land from a vessel licensed for menhaden fishing foodfish in excess of one percent of the total amount of~~

~~fish on board, or to land foodfish from any vessel taking fish with the aid of a purse seine. In determining whether the portion of foodfish exceeds one percent of the total fish on board, the Fisheries Director or his agents are authorized and empowered to grade any portion of the total catch on board. In selecting the size of the portion for the determination of the amount of foodfish present, the portion shall be no less than an amount required to fill a standard five gallon container for each 100,000 fish on board.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03M .0403 FISHING ON WEEKENDS AND HOLIDAYS PROHIBITED

~~(a) It is unlawful to take menhaden or Atlantic thread herring by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.~~

~~(b) It is unlawful to take menhaden or Atlantic thread herring by use of a purse seine between the hours of sunrise and sunset on the following official holidays:~~

- ~~(1) Memorial Day;~~
- ~~(2) Fourth of July, when the Fourth of July falls on any calendar day between sunrise Friday and sunset Monday; and~~
- ~~(3) Labor Day.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03M .0404 FISH SPILL REPORTING MANDATORY

~~When a fish spill occurs, the responsible menhaden fishing company shall:~~

- ~~(1) Immediately notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries of such spill; and~~
- ~~(2) Report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing on the circumstances associated with each spill and costs of its clean up.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0501 RED DRUM

~~(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:~~

- ~~(1) Specify areas.~~
- ~~(2) Specify seasons.~~
- ~~(3) Specify quantity.~~
- ~~(4) Specify means/methods.~~
- ~~(5) Specify size.~~

~~(b)(a) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.~~

~~(e)(b) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.~~

~~(d)(c) It is unlawful to possess more than one red drum per person per day taken by hook-and-line or for recreational purposes.~~

~~(e)(d) The annual commercial harvest limit (September 1 through August 31) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0504 TROUT

~~(a) Spotted seatrout (speckled trout).~~

- ~~(1) It is unlawful to possess spotted seatrout less than 12 inches total length.~~
- ~~(2) It is unlawful to possess more than 10 spotted seatrout per person per day taken by hook-and-line or for recreational purposes.~~

~~(b) Weakfish (gray trout).~~

~~(1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of weakfish by commercial fishing operations:~~

- ~~(A) Specify areas.~~
- ~~(B) Specify seasons.~~
- ~~(C) Specify quantity.~~
- ~~(D) Specify means/methods.~~
- ~~(E) Specify size, but the minimum size shall not be greater than 12 inches total length.~~

~~(2) The Fisheries Director may, by proclamation, in order to comply with or utilize conservation equivalency to comply with the Atlantic States Marine Fisheries Commission Weakfish Management Plan, impose any or all of the following restrictions on the taking of weakfish by hook and line or for recreational purposes:~~

- ~~(A) Specify quantity.~~
- ~~(B) Specify size.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0505 SHARK

~~The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the shark fishery:~~

- ~~(1) Specify size;~~
- ~~(2) Specify seasons;~~
- ~~(3) Specify areas;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

15A NCAC 03M .0506 SNAPPER-GROUPER COMPLEX

~~(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:~~

- ~~(1) Specify size;~~
- ~~(2) Specify seasons;~~
- ~~(3) Specify areas;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

~~(a) The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.gpoaccess.gov/fr www.safmc.net and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.~~

~~(b) Black sea bass, south of Cape Hatteras (35° 15.0321':~~

- ~~(1) It is unlawful to possess black sea bass less than ten inches total length.~~
- ~~(2) It is unlawful to take or possess more than 20 black sea bass per person per day without a valid Federal Commercial Snapper Grouper permit.~~

~~(c) Gag grouper:~~

- ~~(1) It is unlawful to possess gag grouper (gray grouper) less than 24 inches total length.~~
- ~~(2) It is unlawful to possess more than two gag grouper (gray grouper) per person per day without a valid Federal Commercial Snapper Grouper Permit.~~
- ~~(3) It is unlawful to possess more than two gag grouper (gray grouper) per person per day during the months of March and April.~~
- ~~(4) It is unlawful to sell or purchase gag grouper (gray grouper) taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.~~

~~(d) Black grouper:~~

- ~~(1) It is unlawful to possess black grouper less than 24 inches total length.~~
- ~~(2) It is unlawful to possess more than two black grouper per person per day without a valid Federal Commercial Snapper Grouper Permit.~~
- ~~(3) It is unlawful to take or possess more than two black grouper per person per day during the months of March and April.~~
- ~~(4) It is unlawful to sell or purchase black grouper taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery~~

~~Management Council during the months of March and April.~~

~~(e) It is unlawful to possess red grouper less than 20 inches total length.~~

~~(f) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.~~

~~(g) It is unlawful to possess scamp less than 20 inches total length.~~

~~(h) It is unlawful to possess yellowmouth grouper less than 20 inches total length.~~

~~(i) Speckled hind (kitty mitchell) and warsaw grouper:~~

- ~~(1) It is unlawful to sell or purchase speckled hind or warsaw grouper.~~
- ~~(2) It is unlawful to possess more than one speckled hind or one warsaw grouper per vessel per trip.~~

~~(j) Greater amberjack:~~

- ~~(1) For recreational purposes:~~
 - ~~(A) It is unlawful to possess greater amberjack less than 28 inches fork length.~~
 - ~~(B) It is unlawful to possess more than one greater amberjack per person per day.~~
- ~~(2) It is unlawful to sell or purchase greater amberjack less than 36 inches fork length.~~
- ~~(3) It is unlawful to possess more than one greater amberjack per person per day without a valid Federal Commercial Snapper Grouper Permit.~~
- ~~(4) It is unlawful to possess more than one greater amberjack per person per day during the month of April.~~
- ~~(5) It is unlawful to sell or purchase greater amberjack during any season closure for greater amberjack.~~

~~(k) Red Snapper:~~

- ~~(1) It is unlawful to possess red snapper less than 20 inches total length.~~
- ~~(2) It is unlawful to possess more than two red snapper per person per day without a valid Federal Commercial Snapper Grouper permit.~~

~~(l) Vermilion Snapper:~~

- ~~(1) For recreational purposes:~~
 - ~~(A) It is unlawful to possess vermillion snapper (beeliner) less than 11 inches total length.~~
 - ~~(B) It is unlawful to possess more than 10 vermillion snapper per person per day.~~
- ~~(2) It is unlawful to possess or sell vermillion snapper (beeliner) less than 12 inches total length with a valid Federal Commercial Snapper Grouper permit.~~

~~(m) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.~~

~~(n) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.~~

~~(o) Red Porgy (Pagrus pagrus):~~

- ~~(1) It is unlawful to possess red porgy less than 14 inches total length.~~

- (2) ~~It is unlawful to possess more than one red porgy per person per day without a valid Federal Commercial Snapper Grouper permit.~~
- (3) ~~It is unlawful to sell or offer for sale red porgy from January 1 through April 30.~~
- (4) ~~It is unlawful to land more than 50 pounds of red porgy from May 1 through December 31 in a commercial fishing operation.~~

(p) Combined Bag Limits:

- (1) ~~It is unlawful to possess more than 10 vermillion snapper and 10 other snappers per person per day of which no more than two may be red snapper without a valid Federal Commercial Snapper Grouper permit.~~
- (2) ~~It is unlawful to possess more than five grouper without a valid Federal Commercial Snapper Grouper permit of which:~~
 - (A) ~~no more than two may be gag or black grouper (individually or in combination) per person per day;~~
 - (B) ~~no more than one may be speckled hind or one warsaw grouper per vessel per trip.~~
- (3) ~~It is unlawful to possess more than 20 fish in the aggregate per person per day of the following species without a valid Federal Commercial Snapper Grouper permit: whitebone porgy, jolthead porgy, knobbed porgy, longspine porgy, sheepshead, gray triggerfish, queen triggerfish, yellow jack, crevalle jack, bar jack, almaeo jack, lesser amberjack, banded rudderfish, white grunt, margates, spadefish, and hogfish.~~

~~(q) It is unlawful to possess any species of the Snapper-Grouper complex except snowy, warsaw, yellowedge, and misty groupers; blueline, golden and sand tilefishes; while having longline gear aboard a vessel.~~

~~(r) It is unlawful to possess Nassau grouper or jewfish.~~

(s) Fish Traps/Pots:

- (1) ~~It is unlawful to use or have on board a vessel fish traps for taking snappers and groupers except sea bass pots as allowed in Subparagraph (2) of this Paragraph.~~
- (2) ~~Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 646.2, openings and degradable fasteners specified in 50 CFR Part 646.22(c)(2)(i), and escape vents and degradable materials as specified in 50 CFR Part 622.40 (b)(3)(i) and rules published in 50 CFR pertaining to sea bass north of Cape Hatteras (35° 15' N Latitude). Copies of these rules are available via the Federal Register posted on the Internet at www.gpoaccess.gov/fr and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.~~

~~(t) It is unlawful for persons in possession of a valid National Marine Fisheries Service Snapper Grouper Permit for Charter Vessels to exceed the creel restrictions established in Paragraphs~~

~~(b), (j), (o), and (p) of this Rule when fishing with more than three persons (including the captain and mate) on board.~~

~~(u)(b) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper- Grouper complex.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0511 BLUEFISH

~~(a) In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Bluefish developed cooperatively by the Mid Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions for bluefish:~~

- (1) ~~Taken by a commercial fishing operation:~~
 - (A) ~~Specify size;~~
 - (B) ~~Specify seasons;~~
 - (C) ~~Specify areas;~~
 - (D) ~~Specify quantity;~~
 - (E) ~~Specify means/methods; and~~
 - (F) ~~Require submission of statistical and biological data.~~
- (2) ~~Taken for recreational purposes:~~
 - (A) ~~Specify size;~~
 - (B) ~~Specify quantity.~~

~~(b) It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS

~~In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans, Plans or to implement state management measures, the Fisheries Director may, by proclamation, suspend the minimum size and harvest limits established by the Marine Fisheries Commission, and implement different minimum size and harvest limits. take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:~~

- (1) ~~Specify size;~~
- (2) ~~Specify seasons;~~
- (3) ~~Specify areas;~~
- (4) ~~Specify quantity;~~
- (5) ~~Specify means and methods; and~~
- (6) ~~Require submission of statistical and biological data.~~

~~Proclamations issued under this Section Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221(e1). G.S. 113-221.1.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

15A NCAC 03M .0513 RIVER HERRING AND SHAD

~~(a) It is unlawful to possess river herring taken from coastal fishing waters unless the river herring season is open.~~

~~(b) The take of river herring shall be set forth in the North Carolina River Herring Fishery Management Plan for implementation under Paragraph (c) of the Rule.~~

~~(c) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the commercial and recreational blueback herring, alewife, American shad and hickory shad fisheries:~~

- ~~(1) Specify size;~~
- ~~(2) Specify season;~~
- ~~(3) Specify area;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

~~(d) It is unlawful to take American shad and hickory shad by any method except hook and line from April 15 through December 31.~~

~~(e) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook and line or for recreational purposes.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03M .0514 SCUP

~~In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Scup developed cooperatively by the Mid Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions in the scup fishery:~~

- ~~(1) Specify size;~~
- ~~(2) Specify seasons;~~
- ~~(3) Specify areas;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

15A NCAC 03M .0518 KINGFISH (SEA MULLET)

The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of kingfishes:

- (1) Specify season.
- (2) Specify areas.
- (3) Specify quantity.
- (4) Specify means and methods.
- (5) Specify size.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

15A NCAC 03M .0519 SHAD

(a) It is unlawful to take American shad and hickory shad by any method except hook-and-line from April 15 through December 31.

(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

15A NCAC 03M .0520 TUNA

(a) It is unlawful to possess in a commercial fishing operation:

- (1) Yellowfin tuna less than 27 inches curved fork length.
- (2) Bigeye tuna less than 27 inches curved fork length.
- (3) Bluefin tuna less than 73 inches curved fork length.

(b) It is unlawful to possess for recreational purposes:

- (1) Yellowfin tuna less than 27 inches curved fork length.
- (2) Bigeye tuna less than 27 inches curved fork length.
- (3) More than three yellowfin tuna per person per day.

Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 03O .0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES

(a) All areas of the public bottoms underlying coastal fishing waters shall meet the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish cultivation purposes:

- (1) The lease area must not contain a natural shellfish bed which is defined as 10 bushels or more of shellfish per acre.
- (2) The lease area must not be closer than 100 feet to a developed shoreline. In an area bordered by undeveloped shoreline, no minimum setback is required. When the area to be leased borders the applicant's property or borders the property of riparian owners who have consented in a notarized statement, the Secretary may reduce the distance from shore required by this Rule.
- (3) ~~Unless the applicant can affirmatively establish a necessity for greater acreage through the management plan that is attached to the application and other evidence submitted to the Secretary, the~~ The proposed lease area shall not be less than one-half acre and shall not ~~exceed~~ exceed five acres for all areas except those areas open to the

mechanical harvest of oysters where proposed lease area shall not exceed 10 acres.

~~(A) 10 acres for oyster culture;~~

~~(B) 5 acres for clam culture; or~~

~~(C) 5 acres for any other species.~~

This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.

(b) Persons holding five or more acres under shellfish lease or franchise shall meet the standards established in Paragraph (c) of this Rule prior to acceptance of applications for additional shellfish lease acreage.

~~(b)(c)~~ Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall meet the following standards in addition to the standards in G.S. 113-202. In order to avoid termination, franchises and shellfish bottom leases shall:

- (1) Produce and market 10 bushels of shellfish per acre per year; and
- (2) Plant 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

~~(e)(d)~~ The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of Paragraph ~~(b)(c)~~ of this Rule:

- (1) Only shellfish planted, produced or marketed according to the definitions in ~~15A NCAC 03I .0101 (26), (27) and (28)~~ 15A NCAC 03I .0101 shall be submitted on production/utilization forms for shellfish leases and franchises.
- (2) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the standards. The lease or franchise must meet the production requirement and the planting effort requirement within the dates set forth to be judged in compliance with these standards.
- (4) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam

shell and 90 pounds of fossil stone equal one bushel.

- (5) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

- (6) The production and marketing rates shall be ~~averaged~~ averaged:

~~(A)~~ over the ~~most recent three-year period~~ consecutive full calendar years remaining on the lease contract after January 1 December 31 following the second anniversary of initial bottom leases and ~~franchises and throughout the terms of renewal leases.~~ franchises.

~~(B)~~ over the consecutive full calendar years beginning January 1 of the final year of the previous lease term and ending December 31 of the final year of the current lease contract for renewal leases.

~~(C)~~ For water column leases, ~~these production and marketing rates shall be averaged~~ over the first five year period for initial water column leases and over the most recent ~~three~~ five year period ~~thereafter.~~ thereafter for renewal water column leases.

~~Three year averages for production~~ Production and marketing ~~rates~~ rate averages shall be computed irrespective of transfer of the shellfish lease or franchise.

- (7) All bushel measurements shall be in U.S. Standard Bushels.

~~(d)(e)~~ Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

~~(e)(f)~~ Water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

~~(f)(g)~~ Water column leases must produce and market 40 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. The standards for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph ~~(e)(d)~~ of this Rule except that either the produce and market requirement or the planting requirement must be met.

Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52.

15A NCAC 030 .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) Upon acceptance of a completed application, the proposed lease area shall be inspected within a reasonable time by agents of the Division. Proposed lease areas inconsistent with applicable standards contained or referenced in 15A NCAC 30 .0201 shall result in the return of applications for amendment to remove the inconsistencies. If the boundaries of the proposed lease area are modified, the stakes identifying such areas shall be relocated accordingly by the applicant. The failure of applicants to amend applications or modify lease area identification, when required, shall result in denial of such applications.

(b) If the initial or amended lease application is deemed consistent with all applicable requirements, the Secretary or his designee shall notify the applicant and publish notices of intention to lease in accordance with standards in G.S. 113-202(f).

(c) The Secretary shall consider the lease application, the Division's proposed lease area analysis, and public comments, and may in his discretion lease or decline to lease the proposed lease area or any part thereof. Special conditions may be imposed so that leases may be issued which would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the lease by the Secretary, the application shall be considered denied.

(d) Upon approval of leases by the Secretary, applicants shall mark the shellfish bottom leases in accordance with 15A NCAC 30 .0204(a)(1), water column leases in accordance with 15A NCAC 30 .0204(a)(2), and shall within 90 days submit to the Division acceptable surveys of the areas approved for leasing except that a water column lease which entirely covers a shellfish bottom lease or franchise with an accepted survey on file does not require another survey. Such surveys shall be made at the expense of applicants and must meet the following standards:

- (1) Surveys and maps shall meet all the requirements of 21 NCAC 56 .1600, Standards of Practice for Land Surveying in North Carolina, which is hereby incorporated by reference including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Marine Fisheries Division, Marine Fisheries Building, 3441 Arendell St., P.O. Box 769, Morehead City, North Carolina 28557, at no cost.

- (2) Maps shall bear the certificate:
 "I _____ certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision); that the error of closure as calculated by latitudes and departures is 1: _____, that the area is _____ acres. Witness my hand and seal this _____ day of _____ AD _____."

 Surveyor or Engineer

- (3) The phrase "other appropriate natural monuments or landmarks" in 21 NCAC 56 .1604(e)(9) shall include bridges, roads, highways, intersections, publicly maintained aids to navigation, houses and other permanent buildings, radio, telephone, TV, and water towers; docks; piers, and bulkheads; but does not include stakes marking the boundaries of adjoining leases, points of marsh, junctions of streams, or other landmarks which are particularly subject to change through natural processes, storms, or the effect of man.

- (4) A written description of the survey suitable for official documents shall be provided with the survey.

- (5) Locations of all corner markers in latitude and longitude shall be provided with the survey and presented in an eight digit format. The relative accuracy of the corner marker locations shall be equal to or less than two meters. Information on the method of measurement, make and model of equipment, and coordinate system used to determine the latitude and longitude shall be included.

(e) Proposed shellfish bottom lease areas remain public bottom until a formal lease has been executed by the Secretary.

(f) Proposed water column lease areas superjacent to shellfish bottom leases and recognized perpetual franchises remain public water until a formal lease has been executed by the Secretary.

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52.

15A NCAC 030 .0210 SHELLFISH FRANCHISES

(a) The resolution of claims filed under G.S. 113-205 is governed by standards in Departmental Rules 15A NCAC 1G .0200 and .0300. Following receipt of notification that a claim has a valid chain of title, the owner shall provide to the Division within 90 days a survey prepared in accordance with the standards in ~~15A NCAC 30 .0203(d)~~, 15A NCAC 030 .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.

(b) Acceptable management plans, prepared in accordance with the standards in ~~15A NCAC 30 .0202(b)~~, 15A NCAC 030 .0202(b), shall be provided to the Division within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

(c) The survey and management plan requirements in Paragraphs (a) and (b) of this Rule, and all other requirements and conditions of this Section affecting management of franchises, shall apply to all valid shellfish franchises recognized prior to September 1, 1989.

(d) Commercial production requirements for franchises shall be identical to that required for leases in ~~15A NCAC 30 .0201(a)(2)~~ 15A NCAC 030 .0201(c) averaged over the most recent three-year period after January 1 following the second anniversary of the dates of recognition of claims as valid shellfish franchises and continuing throughout the term of management plans required in Paragraph (b) of this Rule.

Annual reporting of commercial production shall be submitted upon receipt of forms provided by the Division for that purpose.

Authority G.S. 113-134; 113-201; 113-202; 113-205; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0116 DESIGNATED SEED OYSTER MANAGEMENT AREAS

The Seed Oyster Management Areas referenced in 15A NCAC 03K .0208 are delineated in the following coastal water areas:

- (1) Croatan Sound and tributaries: Cedar Bush Bay Seed Oyster Management Area, within the area described by a line beginning at a point 35° 50.0383' N - 75° 40.0712' W; running easterly to a point 35° 50.2328' N - 75° 39.4930' W; running southeasterly to a point 35° 49.3831' N - 75° 39.1521' W; running southwesterly to a point 35° 48.8000' N - 75° 39.5000' W; running westerly to a point 35° 48.6333' N - 75° 40.7000' W; running northerly to a point 35° 49.7000' N - 75° 40.6333' W; running northeasterly back to the point of beginning;
- (2) Croatan and Roanoke sounds and tributaries: Wanchese Marshes Seed Oyster Management Area, within an area described by a line beginning at a point 35° 49.0000' N - 75° 38.3000' W; running northerly to a point 35° 49.2243' N - 75° 38.3000' W; running easterly to a point 35° 49.0806' N - 75° 37.5293' W; running easterly to a point 35° 49.2893' N - 75° 37.0335' W; running northeasterly to point 35° 49.5541' N - 75° 36.9715' W; running southerly to a point 35° 49.0000' N - 75° 36.5500' W; running southwesterly to a point 35° 48.1500' N - 75° 36.9500' W; running westerly to a point 35° 48.1000' N - 75° 37.6333' W; running northwesterly to the point of beginning;
- (3) Pamlico Sound and tributaries: Bay River Seed Oyster Management Area, within an area described by a line beginning at a point 35° 10.7670' N - 76° 36.7000' W off Spencer Point; running southeasterly to a point 35° 10.5330' N - 76° 36.4670' W; running westerly to a point 35° 10.4670' N - 76° 36.6500' W; running northwesterly to a point 35° 10.8000' N - 76° 36.9170' W, running easterly to the point of beginning;
- (4) White Oak River: White Oak River Seed Oyster Management Area, within an area described by a line beginning at a point 34° 43.0774' N - 77° 06.8610' W on the White Oak

River/Stevens Creek polluted area line; running northeasterly to a point 34° 43.4006' N - 77° 06.1293' W on the east shore; running southerly along the shoreline to a point 34° 43.0755' N - 77° 06.1187' W; running southwesterly to a point 34° 42.8800' N - 77° 06.7975' W on the White Oak River/Stevens Creek polluted area line; running northerly to the point of beginning;

(5) Topsail Sound and tributaries:

(a) Virginia Creek Seed Oyster Management Area, within an area described by a line beginning at a point 34° 25.4620' N - 77° 36.0074' W on the north shore; running southerly to a point 34° 25.1346' N - 77° 36.0640' W on the south shore; running easterly and southerly along the shoreline to a point 34° 24.9438' N - 77° 35.5325' W on Sloop Point; running northeasterly to a point 34° 25.0988' N - 77° 35.2920' W on the north shore; running northwesterly along the shoreline to the point of beginning;

(b) Topsail Sound Seed Oyster Management Area, within an area described by a line beginning at a point 34° 24.6555' N - 77° 35.6012' W across the IWW from Sloop Point; running southeasterly to a point 34° 24.3677' N - 77° 35.2015' W; running northeasterly to a point 34° 24.5260' N - 77° 35.1070' W; running northwesterly to a point 34° 24.8690' N - 77° 35.2872' W; running southwesterly to the point of beginning.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:

- (1) Croatan Sound area: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.4575' W; running westerly to a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running easterly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to the point of beginning.
- (2) Pamlico Sound area:
 - (a) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.7500' W; running westerly to a point 35° 43.6833' N -

- 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running easterly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to the point of beginning.
- (b) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 75° 22.1612' W; running westerly to a point 35° 22.9126' N - 75° 22.3377' W; running southerly to a point 35° 22.7717' N - 75° 22.1612' W; running easterly to a point 35° 22.7717' N - 75° 22.3377' W; running northerly to the point of beginning.
- (c) Bluff Point: within the area described by a line beginning at a point 35° 18.3000' N - 76° 10.2760' W; running westerly to a point 35° 18.3000' N - 76° 10.0890' W; running southerly to a point 35° 18.1460' N - 76° 10.0890' W; running easterly to a point 35° 18.1460' N - 76° 10.2760' W; running northerly to the point of beginning.
- (d) Clam Shoal: within the area described by a line beginning at a point 35° 17.4784' N - 75° 37.4173' W; running westerly to a point 35° 17.4800' N - 75° 37.1800' W; running southerly to a point 35° 17.1873' N - 75° 37.1826' W; running easterly to a point 35° 17.1873' N - 75° 37.4173' W; running northerly to the point of beginning.
- (e) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.3320' W; running westerly to a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running easterly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to the point of beginning.
- (f) Ocracoke area: within the area described by a line beginning at a point 35° 10.8150' N - 75° 59.8530' W; running westerly to a point 35° 10.8150' N - 75° 59.6320' W; running southerly to a point 35° 10.6320' N - 75° 59.6320' W; running easterly to a point 35° 10.6320' N - 75° 59.8530' W; running northerly to the point of beginning.
- (g) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.4735' W; running westerly to a point 34° 58.8517' N -

76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running easterly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to the point of beginning.

- (3) Neuse River: within the area described by a line beginning at a point 35° 00.4742' N - 76° 32.0550' W; running westerly to a point 35° 00.4742' N - 76° 31.9550' W; running southerly to a point 35° 00.3920' N - 76° 31.9550' W; running easterly to a point 35° 00.3920' N - 76° 32.0550' W; running northerly to the point of beginning.

Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10F .0376.

Proposed Effective Date: September 1, 2008

Public Hearing:

Date: May 1, 2008

Time: 3:00 p.m.

Location: Room 428, 4th floor, Centennial Campus Headquarters, 1751 Varsity Drive, Raleigh, NC

Reason for Proposed Action: Respond to petition from Town of Emerald Isle to establish two no wake zones within its territorial jurisdiction.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For this rule, the contact person is Joan Troy.

Comments may be submitted to: Joan Troy, 1717 Mail Service Center, Raleigh, NC 27699-1717, joan.troy@ncwildlife.org

Comment period ends: June 16, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the

Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

- ☐ State
☒ Local
☐ Substantive (≥\$3,000,000)
☐ None

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER
SAFETY**

**SUBCHAPTER 10F - MOTORBOATS AND WATER
SAFETY**

**SECTION .0300 - LOCAL WATER SAFETY
REGULATIONS**

15A NCAC 10F .0376 TOWN OF EMERALD ISLE

(a) Regulated Area. This Rule applies to waters within the territorial jurisdiction of the Town of Emerald Isle, as described in Paragraph (c) of this Rule.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated area described in Paragraph (c) of this Rule.

(c) Affected Areas are:

(1) the entire length of the Bogue Sound Drive Canal, which is .6 miles in length, located adjacent and roughly parallel to the shoreline in the vicinity of Kelly Lane and Bogue Sound Drive; and

(2) the waters of the Coast Guard Channel at a point extending from the north entrance of the channel behind 419 Channel Drive to the west entrance of the canal near 116 Bogue Court.

(d) Placement and Maintenance of Markers. The Town of Emerald Isle is designated a suitable agency for placement and maintenance of the markers or signs implementing this Rule.

Authority G.S. 71A-15; 72A-3.

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster
Shannon Joseph

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. Agustin Zeferino Hernandez, T/A El Pujido	06 ABC 2275	Chess	10/09/07	
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
ABC Commission v. 703 Jonestown, Inc., T/A Red Rooster	07 ABC 0305	Webster	10/04/07	
ABC Commission v. Donna Darlene Johnston, T/A Wagon Wheel	07 ABC 0738	Webster	09/20/07	
ABC Commission v. Jamal Kamel Hajeh, T/A Pleasant Grove Grocery	07 ABC 0883	Morrison	09/11/07	
ABC Commission v. Jayshreeben Jagishchand Shah, T/A Jay's Grocery #3	07 ABC 1180	Overby	01/11/08	
ABC Commission v. Agustin Zeferino Hernandez	07 ABC 1366	Overby	11/30/07	

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

BOARD OF NURSING

Kenneth C. Johnson v. Board of Nursing	07 BON 1679	Overby	12/13/07
--	-------------	--------	----------

CRIME VICTIMS COMPENSATION

Michael Shaw v. Crime Victims Compensation Commission	07 CPS 0485	Webster	01/29/08
Robert White, Jr., v. Crime Victims Compensation Commission	07 CPS 0497	Webster	09/12/07
Renee L. Hunter	07 CPS 1408	Joseph	10/24/07
Martha M. McMillan v. Victim and Justice Services	07 CPS 1560	Overby	12/18/07
Eric Triplett v. Victim and Justice Services	07 CPS 1561	Lassiter	12/14/07

Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07
--	-------------	---------	----------

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DAG, Food and Drug Protection Division, Pesticide Section v. Jeffrey A. Oxley	06 DAG 0636	Webster	10/04/07
---	-------------	---------	----------

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section	03 DHR 0945	Overby	04/16/07
---	-------------	--------	----------

Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	04 DHR 1508	Gray	01/03/08
---	-------------	------	----------

Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	04 DHR 1771	Gray	01/03/08
---	-------------	------	----------

Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	04 DHR 2324	Gray	01/03/08
---	-------------	------	----------

Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS, Adult Care Licensure Section	05 DHR 0305	Gray	01/03/08
---	-------------	------	----------

CONTESTED CASE DECISIONS

Paul Avery Morton II v. DHHS	06 DHR 0345	Chess	01/11/08	
Mary Elizabeth Matthews v. DHHS, Division of Medical Assistance	06 DHR 0485	Mann	10/01/07	
Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/ Substance Abuse Services at Dix	06 DHR 0984	Mann	05/08/07	
Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/ DD/SAS)	06 DHR 1139	Webster	06/06/07	
Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health	06 DHR 1569	Webster	04/17/07	
James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 1783	Gray	04/23/07	
Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance	06 DHR 1817	Elkins	05/29/07	22:01 NCR 82
Nidal Dahir, DHHS, Division of Public Health	06 DHR 1916	Lassiter	05/14/07	
Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse	06 DHR 2282	Gray	05/18/07	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Stacey M Saylon v. Health Care Personnel Registry	06 DHR 2413	Gray	09/24/07	
Koala Day Care Centers, Inc. (6519), Alfred J. Bost, Sharon Purdie v. CACFP	06 DHR 2428	Webster	12/17/07	
Eunice Hardister v. Health Care Personnel Registry	07 DHR 0029	Overby	01/10/08	
Annette L. Gwynn v. DHHS, Division of Medical Assistance	07 DHR 0030	Webster	06/08/07	
John A. Millan and Cornelia D. Millan v. DHHS	07 DHR 0031	Gray	05/23/07	
Doris Durden/MID #945-63-2642K v. DHHS	07 DHR 0055	Overby	06/04/07	
Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
Chequita Bratcher Carpenter v. DHHS, DFS, Health Care Personnel Registry Section	07 DHR 0318	Chess	10/31/07	
Peter Emeka Nwankwo v. DHHS	07 DHR 0355	Overby	05/04/07	
Geraldine Fenner v. DHHS	07 DHR 0367	Overby	05/23/07	
Annette L. Gwyn v. DHHS/Division of Medical Assistance	07 DHR 0382	Lassiter	04/16/07	
Scottie Dean Beck v. DHHS	07 DHR 0399	Gray	12/04/07	
Jessie Duncan v. DHHS	07 DHR 0424	Elkins	06/08/07	
Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate)	07 DHR 0464	Gray	06/07/07	
Visitacion T Uy v. DHHS/Division of Medical Assistance	07 DHR 0489	Overby	05/10/07	
Dorothy Sue Johnson v. DHHS, DFS	07 DHR 0502	Webster	06/15/07	
Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section	07 DHR 0510	Gray	05/30/07	
Donna Carol Matthews v. DHHS, DFS	07 DHR 0517	Webster	01/22/08	
Latoya Tarell McNeill v. DHHS, DFS	07 DHR 0567	Overby	01/18/08	
Samantha A. Amerson v. DHHS	07 DHR 0578	Overby	06/15/07	
Sandra Leathers v. DHHS, Division of Child Development	07 DHR 0612	Gray	11/02/07	
Anna Trask v. DHHS, Health Care Personnel Registry	07 DHR 0661	Overby	06/15/07	
Stacey M. Saylon v. Health Care Personnel Registry	07 DHR 0662	Gray	09/24/07	
Michelle Keller v. Department of Social Services	07 DHR 0698	Gray	01/02/08	
Carmalitta M. Taylor v. DHHS	07 DHR 0832	Lassiter	08/22/07	
Carolyn Tolson v. DHHS	07 DHR 0850	Lassiter	08/22/07	
Dorothy Rose, Willie Rose, v. DHHS	07 DHR 0859	Lassiter	10/08/07	
Linda Thompson v. DHHS	07 DHR 0862	Lassiter	08/29/07	
Barbara F. Lewis v. Division of Child Development, DHHS	07 DHR 0941	Overby	12/04/07	
Abundance Safe Haven Inc., Girls I, Terron H. Simpson v. DHHS	07 DHR 1004	Elkins	10/03/07	
Keith Beddingfield c/o Thyllis Smith ATFTH Staff, Value Options, Inc.	07 DHR 1059	Overby	10/04/07	
Tonya Thompson v. DHHS	07 DHR 1062	Gray	09/07/07	
Triangle Alternatives Inc., Dorothy George v. OAH, DHHS Emery E Milliken General Counsel	07 DHR 1081	Elkins	10/03/07	
Gina Fuller v. Value Options	07 DHR 1137	Overby	10/04/07	
Marcia Barksdale v. OAH	07 DHR 1138	Elkins	12/03/07	
Cynthia Penniegraft Hodges v. DHHS, DFS	07 DHR 1156	Elkins	12/17/07	
Kroger Pharmacy v. DHHS	07 DHR 1159	Elkins	10/25/07	
Betty Bennett parent of Shantel Boyce v. Medicaid	07 DHR 1193	Overby	10/03/07	
Sherri L. Gabel v. Onslow County Department of Social Services	07 DHR 1203	Webster	10/24/07	
Gloria Ramseur v. Third Party Recovery	07 DHR 1241	Gray	01/17/08	
K&A Food Mart, Hani A. Nahhas v. DHHS, WIC Section	07 DHR 1252	Elkins	12/07/07	
Heavenly Healthcare, AD Fulton v. NC DHHS/Division of Medical Asst.	07 DHR 1262	Overby	10/04/07	
Terry Johnson, SEBHS/Damien McLean, Shartario Stephens v. DHHS, Div Medical Assistance	07 DHR 1301	Gray	10/24/07	
Kids Academy, Dawanda Bridges v. DHHS, Div. of Public Health, Child and Adult Care Food Program	07 DHR 1342	Gray	10/19/07	
Erica Smith v. Medicaid/Value Options	07 DHR 1395	Elkins	12/17/07	
Carolina Disestive Care, PLLC and Gastroenterology Specialists DHHS, DHSR, Certificate of Need	07 DHR 1415	Gray	01/03/08	
Nicole Rivers, Raleera Dixon v. Medicaid	07 DHR 1424	Lassiter	01/09/08	
Dorothy Ross, Willie Ross v. DHHS	07 DHR 1433	Gray	11/29/07	
Arc Services, Inc & The Arc of Stanly County, Inc v. DHHS	07 DHR 1443	Lassiter	11/30/07	
Michael J. Graves v. DHHS, DFS, Mental Health Licensure and Certification Section	07 DHR 1468	Overby	10/10/07	
Beacon Child Care Center, DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1470	Elkins	10/16/07	
Mary Holder v. DFS/Investigation Unit, Tori R. Green	07 DHR 1489	Elkins	12/17/07	

CONTESTED CASE DECISIONS

Vanessa Arnold v. DHHS, DMA	07 DHR 1501	Gray	02/01/08
Teresa B. Balch v. Division of Medical Assistance	07 DHR 1502	Overby	12/20/07
Jerry L. Martin, Arlene N. Martin v. DHHS	07 DHR 1505	Overby	12/18/07
Amjad Al-Fuqaha v. Rowan County Health Dept	07 DHR 1512	Overby	01/14/08
Joey Tillman v. Value Options	07 DHR 1518	Webster	12/17/07
Lula U Nunn (Kadjia . Nunn) v. DHHS/DMA	07 DHR 1547	Joseph	01/07/08
Lula U Nunn (Kadjia . Nunn) v. DHHS/DMA	07 DHR 1548	Joseph	01/07/08
Liliam Ibekwere for Lillian's Prince and Princess, Inc. v. OAH	07 DHR 1590	Joseph	11/28/07
Wanda Boatwright, Dylan Jackson v. Power Up Youth Services v. Medicaid	07 DHR 1602	Lassiter	01/10/08
Jane Bridges v. OAH	07 DHR 1614	Gray	01/07/08
Margie Alford v. DHHS	07 DHR 1666	Gray	12/03/07
New Hope Foundation, Inc., Vernestive Speller Melton v. DMA, Program Integrity	07 DHR 1677	Overby	01/30/08
Julia Johnson v. Medicaid	07 DHR 1681	Joseph	12/10/07
Lekia Moore for Saiquan J Moore v. DHHS, Medical Affairs Department Value Options, Inc.	07 DHR 1688	Overby	01/09/08
Marilyn Deloris Raynor (Watford) v. DHHS, Emery Milliken	07 DHR 1706	Joseph	01/30/08
Frank Cheek v. DHHS	07 DHR 1792	Gray	01/04/08
Lawrence A. Reid v. DHHS, DMA	07 DHR 1793	Gray	01/07/08
Boyce Ballard v. DHHS, DMA	07 DHR 1794	Gray	01/07/08
John R. Fortune v. DHHS, DMA	07 DHR 1795	Gray	01/07/08
Uriel Grant (child), LaToya Miller (mother) v. DHHS	07 DHR 1851	Joseph	01/16/08
Christine Paige v. Medicaid	07 DHR 1853	Joseph	12/14/07
Liam Ibekwere for Lilian's Prince and Princess Child Development v. OAH	07 DHR 1855	Joseph	01/04/08
Michael Smith v. DHHS, DMA	07 DHR 1917	Gray	01/07/08
Josephine Mitchell v. DHHS, DMA	07 DHR 1919	Gray	01/04/08
Kelly L. Preatt v. DHHS	07 DHR 1920	Gray	01/04/08
Shaylonda McKimmon/TT&T Services	07 DHR 1972	Gray	12/19/07
Doris J. Mack v. DMA	07 DHR 2023	Joseph	02/01/08
Martha's Group Home, Inc., Thomas Shepard (Administrative Penalty) v. DHHS	07 DHR 2034	Gray	01/16/08
Martha's Group Home, Inc., Thomas Shepard (Administrative Penalty) v.	07 DHR 2035	Gray	01/16/08
Angela McCray v. DHHS, DMA	07 DHR 2174	Gray	02/01/08
Jabez Home Infusion Company, Debra Cowart v. DHHS	07 DHR 2259	Lassiter	02/12/08
Regina Dozier v. Medicaid – Value Options	07 DHR 2328	Overby	02/11/08
Gloria White v. Value Options	08 DHR 0128	Overby	02/12/08

DEPARTMENT OF JUSTICE

Travis Dan Williams v. Criminal Justice Education and Training Standards Commission	06 DOJ 1198	Webster	04/26/07
Robert Anthony Wilson v. DOJ, Company Police Program	06 DOJ 1508	Gray	02/16/07
Jerry Hailey v. Insurance Underwriting Association	06 DOJ 1528	Gray	10/01/07
Jeremy Shayne Pearce v. DOJ, Campus Police Program	06 DOJ 2424	Overby	04/16/07
Andre Cornelius Patterson v. Private Protective Services Board	07 DOJ 0003	Gray	05/18/07
David Keith Shelton v. Private Protective Services Board	07 DOJ 0011	Morrison	03/29/07
Larry Talbert v. Private Protective Services Board	07 DOJ 0036	Morrison	04/05/07
Patricia Ann Davis v. Criminal Justice Education and Training Standards	07 DOJ 0045	Gray	04/03/07
Kristine A. Conti v. Special Police	07 DOJ 0090	Gray	12/20/07
Antonio Jose Coles v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0142	Overby	04/03/07
Joseph Lester Early II v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0143	Lassiter	09/28/07
Jeffrey S. Moore v. Private Protective Services Board	07 DOJ 0468	Morrison	06/08/07
Roy Lee Burgess v. DOJ, Campus Police Program	07 DOJ 0540	Gray	09/25/07
Norman Jerome Turner v. Criminal Justice Education and Training Standards Commission	07 DOJ 0599	Overby	09/19/07
Ronald Calvin Camp Jr, Sherriffs' Education and Training Standards Comm.	07 DOJ 0727	Joseph	10/17/07
Paul James Dunn v. Sheriffs' Education and Training Standards Commission	07 DOJ 0729	Overby	09/19/07
Frank Burton Scofield v. DOJ, Company Police Program	07 DOJ 0814	Chess	10/10/07
Maury Wills Carmon v. Sheriffs' Education and Training Standards Comm.	07 DOJ 0831	Joseph	02/14/07
Shaun Martin Rhodes v. DOJ, Company Police Program	07 DOJ 0909	Lassiter	01/28/08
William Brian Martin v. Alarm Systems Licensing Board	07 DOJ 0929	Gray	10/16/07
Clifton Benjamin Faulkner, Sr v. Sherriffs' Education and Training Standards Commission	07 DOJ 1134	Gray	10/17/07
Dana M. Williams v. Private Protective Services Board	07 DOJ 1239	Morrison	09/12/07
Timothy M. McIntyre v. Private Protective Services Board	07 DOJ 1257	Morrison	12/21/07
Chris Ray Outen v. Criminal Justice Education & Training Standards Comm.	07 DOJ 1329	Lassiter	12/10/07
William Brian Ivie v. Alarm Systems Licensing Board	07 DOJ 1555	Morrison	12/21/07
Dawn Lajoy Paige v. Private Protective Services Board	07 DOJ 1557	Morrison	12/20/07
Robert Gene Saunders Jr v. Criminal Justice Education and Training Standards Commission	07 DOJ 1658	Lassiter	01/09/08
Audrey Lee Hunt v. Sherriffs' Education and Training Standards Commission	07 DOJ 1676	Brooks	01/11/08
Meredith Hulbert Richards Jr v. Sheriffs' Education and Training Stds. Comm.	07 DOJ 1675	Lassiter	11/27/07
Crystal Swaringen v. Criminal Justice Education and Training Standards Commission	07 DOJ 1713	Joseph	01/30/08
Mark Douglas Vanzant v. Sheriffs' Education and Training Standards Comm.	07 DOJ 1763	Brooks	01/11/08

22:09 NCR 883

CONTESTED CASE DECISIONS

DEPARTMENT OF TRANSPORTATION

Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT 07 DOT 0175 Gray 03/27/07

DEPARTMENT OF STATE TREASURER

Donald C. McCaskill v. DST, Retirement Systems Division 05 DST 0251 Lassiter 01/04/08
Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III 05 DST 1612 Gray 05/23/07

Charles R. Franklin, Jr. v. DST, Retirement Systems Division 06 DST 1672 Overby 05/14/07 22:01 NCR 85

Elaine Scarlett v. DST, Retirement Systems Division 07 DST 0452 Webster 10/12/07
Gilbert P Davis Jr. (LA0204530) v. DST 07 DST 0991 Lassiter 01/23/08
Gary Lawrence Walker v. DST Retirement Systems Division 07 DST 1078 Overby 02/11/08

ETHICS, STATE BOARD OF

Johnnie Burgess v. State Ethics Commission 07 EBD 1466 Gray 02/20/08

EDUCATION, STATE BOARD OF

Billy Ray Brown v. Department of Public Instruction 02 EDC 1272 Webster 06/14/07

Lynn C. Sasser v. Board of Education 06 EDC 0044 Elkins 05/04/07
Karen Stallings v. Board of Education 06 EDC 1725 Elkins 05/08/07 22:01 NCR 90
Phyllis Simms v. Board of Education 06 EDC 1780 Elkins 04/02/07
Jerome A. Powers v. NCPDI 06 EDC 1785 Overby 01/24/08
April Williams Compton v. National Board Certification Committee Public Schools of NC 06 EDC 1816 Webster 05/18/07

Don Landrum v. DPI 06 EDC 1896 Lassiter 01/10/08
John M. Radford, Jr., v. Dept. of Public Instruction 06 EDC 1841 Webster 08/17/07
Vonnita Hart Taylor v Department of Public Instruction 06 EDC 2203 Webster 09/20/07
Ms. Victoria L. Ruffin v. Board of Education 06 EDC 2218 Overby 06/01/07
Connie R. Austin v. Dept. of Public Instruction 06 EDC 2270 Elkins 04/02/07
Sandra B. Rayne v. State Board of Education, DPI Div. of Human Resources Management 06 EDC 2277 Lassiter 10/31/07

Jason Forrister v. Dept. of Public Instruction 07 EDC 0054 Gray 06/22/07 22:09 NCR 888
Merredith Page v. Board of Education 07 EDC 0056 Webster 04/19/07
Jane H. Layton v. Department of Public Instruction 07 EDC 0182 Webster 09/18/07
Corporation for Effective Schooling d/b/a Kestrel Heights School v. Board of Education and DPI 07 EDC 0319 Elkins 10/29/07 22:14 NCR 1340

Olga Patricia Cancino v. Public Schools of NC et al. 07 EDC 0904 Chess 10/10/07
Kesia Coleman v. DPI 07 EDC 1142 Elkins 12/17/07
Eric Scott Feltman by parent Edward S. Feltman v. Wilson County Board of Education 07 EDC 1304 Elkins 12/04/07
Nathaniel J. Mewborn v. Alamance Burlington Schools 07 EDC 1413 Joseph 12/12/07
Tamara S. Brown v. State Board of Education 07 EDC 2077 Overby 02/19/08

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

George A. Jenkins, Jr, d/b/a Lake Juno Park, Inc., v. Dept. of Environmental Health 05 EHR 1161 Lassiter 02/16/07
Wayne Smith, Jack in the Box, Inc. v. DENR 05 EHR 1237 Hunter 10/02/07
Robert D. Bryant v. DENR, Division of Coastal Management and Stanley L. McCauley 05 EHR 2185 Chess 02/16/07

Franklin Grading Co., Inc. v. DENR, Division of Air Quality 06 EHR 0239 Lassiter 10/01/07
Wildcat Investments LLC, James Cook v. Cherokee County Health Depart. 06 EHR 0631 Gray 04/23/07
Randy Dockery v. Cherokee County Health Department 06 EHR 0728 Gray 04/23/07
Alan Raper v. Cherokee Health Department 06 EHR 0873 Gray 04/23/07
Christopher Perry v. Caldwell County Health Department 06 EHR 1010 Elkins 06/05/07
Franklin Grading Co., Inc. v. DENR, Division Air Quality 06 EHR 1525 Lassiter 10/01/07
Robert Don Foster v. DENR, Div. of Coastal Management 06 EHR 1833 Morrison 05/11/07 22:01 NCR 95
Andrew Price v. DENR, Div. of Coastal Management and William F. Canady 06 EHR 1834 Morrison 05/11/07 22:01 NCR 95
Conrad McLean v. DENR/Division of Air Quality 06 EHR 2243 Gray 05/03/07
Terry Collins v. DENR, Division of Waste Management 06 EHR 2414 Gray 05/01/07
Riverwalk, LLC v. Town of Highlands 06 EHR 2420 Gray 10/01/07

H. Johnston Sifly v. DENR, Div. of Coastal Management 07 EHR 0040 Gray 09/06/07
Paul A. Stennett v. DENR, Public Water Supply Section 07 EHR 0170 Overby 05/04/07
Thomas E. Carr v. DENR 07 EHR 0178 Overby 02/05/08
Daniel R. Wroblewski v. DENR and Coastal Management 07 EHR 0217 Overby 05/08/07
James Wallace v. DENR 07 EHR 0600 Elkins 09/18/07
Max Plowman v. DENR, Division of Air Quality 07 EHR 0828 Webster 09/25/07
Douglas Gilchrist v. Division of Water Quality 07 EHR 1051 Webster 01/31/08
Robert Thomas Evans v. DENR 07 EHR 1120 Overby 01/02/08
Andre Family LLC v. Carteret County Health Dept 07 EHR 1160 Elkins 10/25/07
Greg Simpkins v. DENR, Division of Water Quality 07 EHR 1397 Gray 01/14/08
Gumby's Pizza, Chancellor Hippler v. DENR, Division Environmental Health 07 EHR 1769 Lassiter 01/29/08
Metropolitan Group, Inc., v. Surface Water Protection Section, Division of Water Quality, DENR 07 EHR 1771 Joseph 01/28/08

BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

Board of Examiners for Engineers and Surveyors v. C. Phil Wagoner, PLS No. L-2416	07 EHR 0141	Morrison	08/21/07	
--	-------------	----------	----------	--

GOVERNOR'S OFFICE

Jerry W. Conner (NCDOC#0085045) and James A. Campbell (NCDOC# 0063592) v. Council of State	07 GOV 0238	Morrison	08/09/07	22:04 NCR 280
James Edwards Thomas and Marcus Robinson and Archie Lee Billings v. Council of State	07 GOV 0264	Morrison	08/09/07	22:04 NCR 280

DEPARTMENT OF INSURANCE

Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan	06 INS 1016	Overby	05/07/07	
Larry Miller v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1236	Overby	04/11/07	
Randall A. Meder v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 1413	Overby	07/16/07	22:04 NCR 264
Barbara Smith Pearce v. State Health Plan	07 INS 0008	Overby	07/12/07	22:04 NCR 273
Phillip J. Adler and Benjamin F. Adler v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 0037	Overby	10/19/07	22:11 NCR 1158
Robert Francis Payne v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 1365	Elkins	12/11/07	

MISCELLANEOUS

Sylvia Oliver v. Superior Court Judges, Clerk of Court Judges	07 MIS 1603	Lassiter	10/18/07	
---	-------------	----------	----------	--

OFFICE OF ADMINISTRATIVE HEARINGS

Senora Kemp v. OAH	07 OAH 0776	Lassiter	09/06/07	
--------------------	-------------	----------	----------	--

OFFICE OF STATE PERSONNEL

Monty Steven Poarch v. Crime Control and Public Safety, State Highway Patrol	03 OSP 2004	Lassiter	09/17/07	
Willie G. Shaw v. Division of Forest Resources	05 OSP 0414	Overby	04/13/07	
Shirley Barnes v. Murdoch Center	06 OSP 0230	Elkins	01/11/08	22:18 NCR 1621
Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07	
Franklin Leaven v. DHHS, DDH	06 OSP 1132	Lassiter	10/17/07	
Patrice Bernard v. NC A&T State University	06 OSP 1550	Elkins	06/05/07	
Angelia Davis v. UNC-Charlotte	06 OSP 1908	Gray	03/08/07	
Toni Edwards v. UNC Greensboro Police Department	06 OSP 2219	Gray	10/04/07	
Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention	06 OSP 2346	Gray	04/20/07	
Cornelia Yvette Taylor v. Currituck County Department of Social Services	06 OSP 2384	Webster	01/07/08	
Larry L. Deyton v. Mitchell County Commission Board	06 OSP 2415	Gray	04/19/07	
Rose M. Baltezore v. City of Brevard	07 OSP 0009	Gray	04/03/07	
Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07	
Pei Wang v. UNC-Chapel Hill	07 OSP 0273	Lassiter	04/19/07	
Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County Manager	07 OSP 0294	Lassiter	04/20/07	
Angela Townsend v. DOC	07 OSP 0365	Lassiter	01/14/08	
Shannon Harris Tadlock v. Wilson County, Department of Public Health	07 OSP 0491	Lassiter	05/07/07	
Patricia G. Flanagan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07	
Tobias M. Guilluame v. FSU Police & Public Safety	07 OSP 0565	Overby	05/10/07	
Archie Andrew Copeland v. Dept. of Juvenile Justice & Delinquency Prevention	07 OSP 0976	Lassiter	08/29/07	
Patricia Bethea Williams v. NC A&T State University	07 OSP 1053	Overby	08/28/07	
Amy M. Peck v. NC A&T State University Police Department	07 OSP 1346	Lassiter	11/29/07	
Kathleen E. Kicinski v. NC A&T State University	07 OSP 1347	Lassiter	11/29/07	
Kevin Edral Douglas v. NCSU	07 OSP 1465	Joseph	12/03/07	
Bobby R. Davis v. Dept. of Labor, Bureau of Education, Training and Tech. Assistance	07 OSP 1492	Overby	01/04/08	
Terence G. Westry v. NC A&T State University	07 OSP 1497	Webster	12/17/07	
Richard Allen Kono v. DOCC and Adult Probation and Parole	07 OSP 1563	Elkins	01/29/08	
Angela N. Mewborn v. Office of State Auditor	07 OSP 1668	Lassiter	12/07/07	
Darrin Ball v. Wildlife Resources Commission	07 OSP 1678	Elkins	12/11/07	
Herman L. Colvin v. Industrial Commission	07 OSP 1724	Lassiter	01/11/08	
Samuel A. Aghimien v. DOT	07 OSP 1753	Lassiter	01/10/08	
Mahatam S. Jailall v. DPI	07 OSP 1978	Overby	12/21/07	
Lasonya L. Howell v. Cherry Hospital – DHHS	07 OSP 2344	Gray	02/26/08	
Ricco A. Raynor v. Cherry Hospital	08 OSP 0013	Gray	02/26/08	
Lysheaka Pullen v. DHHS	08 OSP 0156	Gray	02/18/08	

SECRETARY OF STATE

CONTESTED CASE DECISIONS

Mary C. Brandon v. Department of the Secretary of State	06 SOS 1839	Elkins	04/02/07
Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall	07 SOS 0224	Overby	04/27/07
Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07
Angela Dozier v. SOS	07 SOS 0912	Gray	08/30/07
Timeka Rene' Jones v. SOS	07 SOS 1309	Lassiter	12/12/07

UNC HOSPITALS

Layton Leach v. UNC Hospital	05 UNC 0449	Bryan	09/07/07
Mary Lawson v. UNC Hospital	05 UNC 0467	Bryan	09/28/07
Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
Mark A. Parrish v. UNC Hospitals	06 UNC 2406	Elkins	06/15/07
Carolyn Parker v. UNC Hospitals	07 UNC 0924	Lassiter	09/06/07
Debra B. Davis v. UNC Hospitals	07 UNC 1169	Brooks	10/01/07
James P. Dunn v. UNC Hospitals	07 UNC 1559	Gray	01/03/08