

NORTH CAROLINA REGISTER

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October 1, 2021

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PUBLISHED BY

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NORTH CAROLINA REGISTER
Publication Schedule for January 2021 – December 2021

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	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
35:20	04/15/21	03/24/21	04/30/21	06/14/21	06/21/21	07/15/21	08/01/21	01/10/22
35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
35:23	06/01/21	05/10/21	06/16/21	08/02/21	08/20/21	09/16/21	10/01/21	02/26/22
35:24	06/15/21	05/24/21	06/30/21	08/16/21	08/20/21	09/16/21	10/01/21	03/12/22
36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
36:03	08/02/21	07/12/21	08/17/21	10/01/21	10/20/21	11/18/21	12/01/21	04/29/22
36:04	08/16/21	07/26/21	08/31/21	10/15/21	10/20/21	11/18/21	12/01/21	05/13/22
36:05	09/01/21	08/11/21	09/16/21	11/01/21	11/22/21	12/16/21	01/01/22	05/29/22
36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
36:10	11/15/21	10/22/21	11/30/21	01/14/22	01/20/22	02/17/22	03/01/22	08/12/22
36:11	12/01/21	11/05/21	12/16/21	01/31/22	02/21/22	03/17/22	04/01/22	08/28/22
36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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.



State of North Carolina

ROY COOPER
GOVERNOR

August 27, 2021

EXECUTIVE ORDER NO. 228

FLEXIBILITY REGARDING CERTAIN LAW ENFORCEMENT TRAINING COURSES

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, on February 24, 2021, the President issued notice that the national emergency relating to COVID-19 must remain in effect because the pandemic "continues to cause significant risk to the public health and safety of the Nation"; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, and 224-225; and

WHEREAS, more than one million one hundred eighty-nine thousand (1,189,000) people in North Carolina have had COVID-19, and over fourteen thousand three hundred (14,300) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, the State of Emergency allows North Carolina to receive federal funding; to provide increased regulatory flexibility to the North Carolina Department of Health and Human Services ("NCDHHS") and health care facilities, which allows health care providers to expand their capacity to treat patients and assist with vaccination efforts; and to respond to any spikes in spread of the disease; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

WHEREAS, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

WHEREAS, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than eighty percent (80%) of all new COVID-19 cases in North Carolina; and

WHEREAS, the Delta variant's growing dominance, coupled with its increased transmissibility, has led to a significant increase in the number of COVID-19 cases and hospitalizations; and

WHEREAS, in this State of Emergency, it is critical that law enforcement officers be able to protect the public, perform or facilitate emergency services, and fulfill emergency directives from the government; and

WHEREAS, many law enforcement training courses have had to be suspended or postponed to slow the spread of COVID-19 and to protect instructors and trainees; and

WHEREAS, in the event of a suspension or postponement, current administrative rules would cause progress to be lost in courses governed by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission; and

WHEREAS, this loss of progress could jeopardize law enforcement officers' certification and reduce the number of law enforcement officers available at a time of great need; and

WHEREAS, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission have requested the flexibility to waive or modify the requirements that would cause progress to be lost; and

WHEREAS, the undersigned has determined that the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission should have flexibility to waive or modify the requirements that would cause progress to be lost; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the officers and personnel of the departments, offices, and agencies of the state and its political subdivisions are required to cooperate with the undersigned and extend their services to the undersigned so that they can be utilized upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise other such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Extending Time to Complete Criminal Justice Training Courses

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

- A. **Basic Law Enforcement Training courses.** The North Carolina Criminal Justice Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 09B .0202(b)(2) that the Basic Law Enforcement Training (BLET) course be delivered "during consecutive calendar weeks, except that there may be as many as three (3) one-week breaks until course requirements are completed." This authorization applies to any BLET course that was in progress or commenced after August 1, 2021.
- B. **Detention Officer Certification courses.** The North Carolina Sheriffs' Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 10B .0704(a)(1)(A) that the Detention Officer Certification course be delivered "during consecutive calendar weeks." This authorization applies to any course that was in progress or commenced after August 1, 2021.
- C. **Other courses.** The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission may, in their discretion, waive or modify all other requirements in Title 12, Chapters 9 and 10 of the North Carolina Administrative Code requiring that a course take place during a period of "consecutive" weeks. This authorization applies to any course that was in progress or commenced after August 1, 2021.

Section 2. No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other

entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 3. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 4. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 5. Effective Date

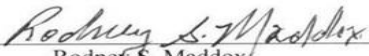
This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days from today's date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

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 27th day of August in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

August 31, 2021

EXECUTIVE ORDER NO. 229

EXTENDING MEASURES TO FACILITATE VACCINE ADMINISTRATION, COVID-19 TESTING, AND THE VACCINE VERIFICATION POLICY FOR CABINET AGENCIES

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, and 228; and

WHEREAS, more than one million two hundred thirteen thousand six hundred (1,213,600) people in North Carolina have had COVID-19, and over fourteen thousand four hundred (14,400) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, the State of Emergency allows North Carolina to receive federal funding; to provide increased regulatory flexibility to the North Carolina Department of Health and Human Services ("NCDHHS") and health care facilities, which allows health care providers to expand their capacity to treat patients and assist with vaccination efforts; and to respond to any spikes in spread of the disease; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

Current Metrics

WHEREAS, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

WHEREAS, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than ninety-five percent (95%) of all new COVID-19 cases in North Carolina; and

WHEREAS, the Delta variant's growing dominance, coupled with its increased transmissibility, has led to a significant increase in the number of COVID-19 cases and hospitalizations, particularly among those who are unvaccinated; and

WHEREAS, although the Delta variant represents a severe threat to the unvaccinated, being vaccinated greatly reduces the chance of being infected by the Delta variant, and being vaccinated greatly reduces the risk that anyone who does contract the Delta variant becomes severely ill, requires hospitalization, or dies; and

Extension of Certain Provisions of Executive Order No. 224

WHEREAS, to facilitate the provision of COVID-19 testing and vaccine administration across the state, Executive Order No. 224 directed the State Health Director to issue, and confirmed the State Health Director's flexibility to issue, any statewide standing order needed for COVID-19 testing or for administering an authorized or approved COVID-19 vaccine; and

WHEREAS, Executive Order No. 224 also promotes COVID-19 testing and vaccine administration by preempting local regulations that may prevent such activity; and

WHEREAS, in light of troubling COVID-19 metrics across the state, and the need to continue testing and vaccination efforts, the undersigned, at the recommendation of NCDHHS, has determined that the above-referenced measures of Executive Order No. 224 should be extended for an additional ninety (90) days; and

WHEREAS, in Executive Order No. 224, the undersigned determined that Cabinet agency workers should be required to show either that they are fully vaccinated or that they have been recently tested for COVID-19, and directed the Office of State Human Resources ("OSHR") to issue a policy to implement the proof-of-vaccination and testing requirements; and

WHEREAS, on August 13, 2021, OSHR issued the Requirements for COVID-19 Testing and Face Coverings as an Alternative to Proof of Full Vaccination policy, and this policy, as updated on August 27, 2021, takes effect on September 1, 2021; and

WHEREAS, to protect the health and safety of state employees and the general public, Cabinet agencies should continue to implement this policy for the effective period of this Executive Order; and

WHEREAS, the undersigned continues to encourage all state and local government agencies, school systems, and private businesses and organizations, at a minimum, to adopt the same protections for state employees and the public as those directed under Executive Order No. 224; and

Statutory Determinations and Authority

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article”; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a State of Emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities; and

WHEREAS, pursuant to Article III of the Constitution of North Carolina and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143B-10(j)(3), the head of each principal state department and the Director of the Office of State Human Resources may adopt policies, consistent with law and with rules established by the Governor and with rules of the State Human Resources Commission ("Commission"), which reflect internal management procedures within each department, including policies governing the conduct of employees of the department; and

WHEREAS, pursuant to N.C. Gen. Stat. § 126-4, the Commission shall establish state human resources policies and rules subject to approval of the Governor, and pursuant to this statute, the Commission has issued a Communicable Disease Emergency Policy and rules that require social distancing policies, including administrative and engineering controls, that shall be implemented immediately upon orders from the Governor.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above and in Executive Order No. 224, **IT IS ORDERED**:

Section 1. Extension of Certain Provisions of Executive Order No. 224.

Sections 2, 3, and 8 of Executive Order No. 224 are hereby extended for an additional ninety (90) days from today's date, unless repealed, replaced, or rescinded by another applicable Executive Order.

Section 2. Continuation of Policies Established under Executive Order No. 224.

Throughout the effective period of this Executive Order, Cabinet agencies are directed to continue to implement the policy issued under Sections 4.1 and 4.2 of Executive Order No. 224, requiring workers to either be fully vaccinated or be tested for COVID-19 each week. Workers will be required to directly or indirectly provide proof of vaccination or test results, as applicable, to the Cabinet agency where they work.

Section 3. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable to law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 4. Distribution.

The undersigned hereby orders that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the State of North Carolina; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.


Section 5. Savings Clause.

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Effective Date.


This Executive Order is effective August 31, 2021 at 5:00 p.m. This Executive Order shall remain in effect for an additional ninety (90) days from today's date unless repealed, rescinded, or replaced by another applicable Executive Order. An Executive Order rescinding the Declaration of State of Emergency will automatically rescind this Executive Order.

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 31st day of August in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

August 31, 2021

EXECUTIVE ORDER NO. 230

EXTENDING TRANSPORTATION-RELATED PROVISIONS IN PREVIOUS EXECUTIVE ORDERS

WHEREAS, on March 10, 2020, the undersigned issued Exec. Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, and 228; and

WHEREAS, more than one million two hundred thirteen thousand six hundred (1,213,600) people in North Carolina have had COVID-19, and more than fourteen thousand four hundred (14,400) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

WHEREAS, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

WHEREAS, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than ninety-five percent (95%) of all new COVID-19 cases in North Carolina; and

WHEREAS, the Delta variant's growing dominance, coupled with its increased transmissibility, has led to a significant increase in the number of COVID-19 cases and hospitalizations; and

WHEREAS, the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments is an essential need of the public and any interruption in the delivery of those fuels threatens the public welfare; and

WHEREAS, Executive Order No. 116, issued on March 10, 2020, included certain suspensions of Federal Motor Carrier Safety Regulations; and

WHEREAS, on August 31, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Extension and Amendment of Emergency Declaration No. 2020-002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

WHEREAS, the undersigned has determined that provisions in Executive Order Nos. 116 and 119 need to remain in place to allow for the continued expedited movement of vehicles in the state; and

WHEREAS, Executive Order No. 119, issued on March 20, 2020, facilitated critical motor vehicle operations; and

WHEREAS, Executive Order No. 217, issued on June 1, 2021, extended the transportation related provisions in Executive Order Nos. 116, 119, 133, 140, 146, 150, 157, 164, 192, and 197; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.70(b), allows for the undersigned to declare by executive order that the health, safety, or economic well-being of persons or property in this state require that the maximum hours of service prescribed by the Department of Public Safety ("DPS")

pursuant to N.C. Gen Stat. § 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Extensions

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

A. Executive Order Nos. 116 and 119.

1. Sections 5 and 5.5 of Executive Order No. 119 (which were extended by Executive Order Nos. 133, 140, 146, 150, 157, 164, 197, 217 and reissued in No. 192) are hereby extended through the end of the calendar day on November 30, 2021.
2. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119, Section 1 of Executive Order No. 146, Section 1 of Executive Order No. 150, Section 1 of Executive Order No. 157, Section 1 of Executive Order No. 192 and extended by Executive Order Nos. 133, 140, 146, 150, 157, 164, 197, 217 and reissued in No. 192) is extended pursuant to N.C. Gen. Stat. § 166A-19.70(b) through the end of the calendar day on November 30, 2021.

Section 5 of Executive Order No. 116 is amended as follows:

In order to ensure adequacy and location of supplies and resources to respond to COVID-19, DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 subject to the restrictions and limitations in this Executive Order, if the driver is transporting medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; vaccines, constituent products, and medical supplies and equipment including ancillary supplies/kits for the administration of vaccines, related to the prevention of COVID-19; and supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19, such as masks, gloves, hand sanitizer, soaps and disinfectants, essential fuels such as fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments; and food, water, livestock, poultry, feed for livestock and poultry and other supplies and equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19. These maximum hours may be waived through the duration of the State of Emergency or until further notice. Direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this Executive Order.

3. The first sentence of Section 8 of Executive Order No. 119 is amended to read:

"This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on November 30, 2021, or until rescinded or superseded by another applicable Executive Order."

B. Miscellaneous provisions. For avoidance of doubt:

1. Future Executive Orders may extend the term of the restrictions, delegations, and requirements listed above.
2. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

Section 2. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 3. Effective Date

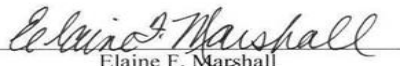
This Executive Order is effective immediately. This Executive Order shall remain in effect through the end of the calendar day on November 30, 2021, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

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 31st day of August in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

September 2, 2021

EXECUTIVE ORDER NO. 231

REINSTATING CERTAIN UNEMPLOYMENT INSURANCE REQUIREMENTS

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, and 228-230; and

Reinstating Certain Unemployment Insurance Requirements Waived by Executive Order No. 118

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) ("CARES Act"), afforded states flexibility to modify or suspend certain requirements for unemployment benefits in response to the COVID-19 pandemic; and

WHEREAS, the CARES Act provisions referenced above were extended by the Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182 (2020), and later extended and amended by the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021); and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 118, Sections 2 and 3 of which streamlined unemployment insurance eligibility requirements to ensure availability of benefits to the maximum extent allowed by federal law in response to COVID-19; and

WHEREAS, among other measures, Executive Order No. 118 authorized the North Carolina Department of Commerce (the “Department”) to waive, or interpret flexibly, as appropriate, the unemployment benefits eligibility requirements under N.C. Gen. Stats. §§ 96-14.1(b), 96-14.9(b) and (e), and 96-15.01(b)(2)(a), and directed the Department not to allocate charges to employers’ accounts for individuals who are paid benefits for reasons related to COVID-19; and

WHEREAS, Executive Order No. 200, 35 N.C. Reg. 2116-2119 (April 1, 2021), directed the Department to reimpose the work search and work registration requirements of N.C. Gen. Stat. § 96-14.9(b) and (e) on a subset of claimants who filed for unemployment benefits on or after March 14, 2021, with flexibility given to the Department as to how these requirements could be achieved; and

WHEREAS, Executive Order No. 216, 35 N.C. Reg. 2660-2664 (June 15, 2021), reinstated the requirements under N.C. Gen. Stat. §§ 96-14.9(b) and (e), and 96-15.01(b)(2)(a) on all claimants; and

WHEREAS, the flexibility provided to states in the administration of unemployment benefits under the CARES Act and subsequent federal legislation is set to expire on September 6, 2021; and

WHEREAS, without further federal legislative action, the week ending September 4, 2021, is the last payable week in which the state can receive federal reimbursement for its payment of benefits to claimants during the one-week waiting period; and

WHEREAS, at the recommendation of the Department and to align with expiration of the flexibility provided in the federal legislation described above, the undersigned now desires to reinstate certain unemployment insurance requirements which were waived under Executive Order No. 118; and

WHEREAS, specifically, this Executive Order reinstates the one-week waiting period for unemployment benefits under N.C. Gen. Stat. § 96-14.1(b) and rescinds the directive to the Department not to allocate charges to employers’ accounts for individuals who are paid benefits for reasons related to COVID-19; and

WHEREAS, the undersigned remains committed to supporting North Carolina businesses as they recover from the COVID-19 pandemic and to jobseekers as they return to the workplace; and

Statutory Determinations and Authority

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to “cooperate and coordinate” with the President of the United States and the heads of department and other agencies of the federal government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article".

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above and in Executive Order No. 118, **IT IS ORDERED**:

Section 1. Rescission of Certain Provisions of Executive Order No. 118.

Sections 2, 3(a)(i), and 3(b) of Executive Order No. 118 are hereby rescinded as of the effective date of this Executive Order. Sections 3(c) and 3(d) of Executive Order No. 118 remain in effect for all claimants until rescinded by another Executive Order or by an Executive Order rescinding the Declaration of a State of Emergency.

Section 2. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable to law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 3. Distribution.

The undersigned hereby orders that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the State of North Carolina; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

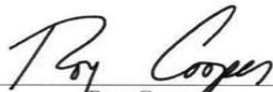
Section 4. Savings Clause.

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 5. Effective Date.

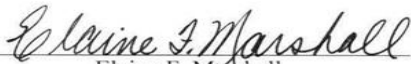
This Executive Order is effective September 5, 2021. An Executive Order rescinding the Declaration of State of Emergency will automatically rescind this Executive Order.

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 2nd day of September in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

September 2, 2021

EXECUTIVE ORDER NO. 232

DIRECTING THE ISSUANCE OF A STATEWIDE STANDING ORDER TO EXPAND ACCESS TO MONOCLONAL ANTIBODY TREATMENT FOR COVID-19

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, and 228-230; and

WHEREAS, more than one million two hundred and twenty-eight thousand (1,228,000) people in North Carolina have had COVID-19, and over fourteen thousand six hundred (14,600) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, the State of Emergency allows North Carolina to receive federal funding; to provide increased regulatory flexibility to the North Carolina Department of Health and Human Services ("NCDHHS") and health care facilities, which allows health care providers to expand their capacity to treat patients and assist with vaccination efforts; and to respond to any spikes in spread of the disease; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to advance the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

Need for Statewide Standing Order to Expand Access to Monoclonal Antibodies for the Treatment and Prevention of COVID-19

WHEREAS, COVID-19 cases, and COVID-19 associated hospitalizations are rising and nearing peak levels close to those of January 2021; and

WHEREAS, the use of monoclonal antibodies can decrease the risk that an individual will experience severe illness, need emergency department care or hospitalization, or die from COVID-19; and

WHEREAS, the Food and Drug Administration has issued an Emergency Use Authorization for the use of monoclonal antibodies in treatment of persons diagnosed with COVID-19 who are experiencing mild to moderate symptoms and who are at high-risk for severe illness and for the use of monoclonal antibodies for the prevention of illness in certain persons at high-risk for infection and disease severity; and

WHEREAS, the National Institutes of Health COVID-19 Treatment Guidelines Panel now strongly recommends the use of monoclonal antibody therapy to treat outpatients diagnosed with COVID-19 who are experiencing mild to moderate symptoms and who are at high-risk for clinical progression; and

WHEREAS, North Carolinians may have limited access to monoclonal antibody treatment and there is a need to increase equitable access to this medication; and

WHEREAS, the State Health Director has been assigned authority by the North Carolina Department of Health and Human Resources ("NCDHHS"), pursuant to N.C. Gen. Stat. § 130A-3, to exercise authorities under N.C. Gen. Stat. § 130A-5, including to investigate the causes of communicable diseases affecting the public health in order to control and prevent those diseases; to provide, under the rules of the North Carolina Commission of Public Health, for the prevention, detection, reporting, and control of communicable diseases; and to develop and carry out programs necessary for the protection and promotion of the public health and control of the disease; and

WHEREAS, accordingly, the State Health Director may issue statewide standing orders to facilitate the response to COVID-19; and

WHEREAS, the undersigned now desires to direct the State Health Director to issue, and affirms her flexibility to issue, a statewide standing order for the use of monoclonal antibodies; and

WHEREAS, a statewide standing order for the use of monoclonal antibodies will enable those health care providers and health care facilities who need to rely on the statewide standing order to administer monoclonal antibody treatment to do so, per the terms of the standing order; and

WHEREAS, a statewide standing order for monoclonal antibody therapy will remove barriers to access and increase North Carolinians' access to potentially life-saving treatment; and

WHEREAS, to facilitate the provision of monoclonal antibody treatment, it is also important that those licensed or otherwise authorized to administer the treatment and those issuing the standing order directed hereunder are insulated from liability to the maximum extent permitted by law; and

Statutory Determinations and Authority

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the officers and personnel of the departments, offices, and agencies of the state and its political subdivisions are required to cooperate with the undersigned and extend their services to the undersigned so that they can be utilized upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise other such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30 for those provisions of this Executive Order requiring concurrence.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above, **IT IS ORDERED**:

Section 1. Statewide Standing Order for Use of Monoclonal Antibodies for Treatment and Prevention of COVID-19.

In order to further protect the public health by providing greater access to COVID-19 treatment, the undersigned orders the State Health Director, in addition to and in accordance with her powers set out in N.C. Gen. Stat. Chapter 130A, to issue any statewide standing order needed in her medical judgement that would allow individuals who meet the criteria in the Food and Drug Administration Emergency Use Authorization to access and receive monoclonal antibodies, subject to the terms of the standing order.

Section 2. Expressly Providing that Administration of Monoclonal Antibody Treatment Is Among the Subjects for Limitation of Liability Under N.C. Gen. Stat. § 166A-19.60.

A. Amendment. Subsections 3(C)(1)-(2) of Executive Order No. 130 and Subsections 2(B)(1)-(2) of Executive Order No. 193 are each amended to read as follows:

1. All persons who are licensed or otherwise authorized under an Executive Order to perform vaccinations, COVID-19 testing, or administer monoclonal antibody treatment; issue medical standing orders for vaccinations, testing, or the administration of monoclonal antibody treatment; or perform professional skills in the field of health care are hereby requested to provide emergency services to respond to the COVID-19 pandemic and, to the extent they are providing emergency services, therefore constitute "emergency management workers" to the extent allowed under N.C. Gen. Stat. § 166A-19.60(e).

2. Therefore, the undersigned intends that all such emergency management workers should be insulated from civil liability to the maximum extent authorized by N.C. Gen. Stat. § 166A-19.60, except in cases of willful misconduct, gross negligence, or bad faith.

B. Intent. For the avoidance of doubt, and notwithstanding Section 1 of Executive Order No. 225, Section 2 of this Executive Order is intended to extend the above-referenced provisions, as amended herein, through the expiration date of this Executive Order.

Section 3. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable to law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 4. Distribution.

The undersigned hereby orders that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the State of North Carolina; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

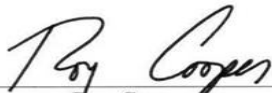
Section 5. Savings Clause.

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Effective Date.

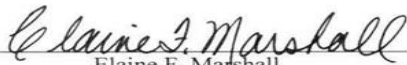
This Executive Order is effective immediately and shall remain in effect until November 30, 2021, unless repealed, replaced, or rescinded by another Executive Order. An Executive Order rescinding the Declaration of State of Emergency will automatically rescind this Executive Order.

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 2nd day of September in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



**The 2022~~1~~ Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

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I. INTRODUCTION

The 2022¹ Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term “Agency” shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

A. Selection criteria to be used in determining the allocation of tax credits:

- Project location and site suitability.
- Market demand and local housing needs.
- Serving the lowest income tenants.
- Serving qualified tenants for the longest periods.
- Design and quality of construction.
- Financial structure and long-term viability.
- Use of federal project-based rental assistance.
- Use of mortgage subsidies.
- Experience of development team and management agent(s).
- Serving persons with disabilities and persons who are homeless.
- Willingness to solicit referrals from public housing waiting lists.
- Tenant populations of individuals with children.
- Projects intended for eventual tenant ownership.
- Projects that are part of a community redevelopment effort.
- Energy efficiency.
- Historic nature of the buildings.

B. Threshold, underwriting and process requirements.

C. Description of the Agency’s compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster
- pandemic / epidemic,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits, RPP, and WHLP funding,

the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

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II. SET-ASIDES, AWARD LIMITATIONS, AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

A. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). The maximum award under this set-aside to any one Principal will be one project.

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

B. NEW CONSTRUCTION SET-ASIDES

1. GEOGRAPHIC REGIONS

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

West 16%		Central 23%		Metro 38%	East 23%	
Alexander	Lincoln	Alamance	Moore	Buncombe	Beaufort	Jones
Alleghany	Macon	Anson	Orange	Cumberland	Bertie	Lenoir
Ashe	Madison	Cabarrus	Person	Durham	Bladen	Martin
Avery	McDowell	Caswell	Randolph	Forsyth	Brunswick	Nash
Burke	Mitchell	Chatham	Richmond	Guilford	Camden	New Hanover
Caldwell	Polk	Davidson	Rockingham	Mecklenburg	Carteret	Northampton
Catawba	Rutherford	Davie	Rowan	Wake	Chowan	Onslow
Cherokee	Surry	Franklin	Scotland		Columbus	Pamlico
Clay	Swain	Granville	Stanly		Craven	Pasquotank
Cleveland	Transylvania	Harnett	Stokes		Currituck	Pender
Gaston	Watauga	Hoke	Union		Dare	Perquimans
Graham	Wilkes	Iredell	Vance		Duplin	Pitt
Haywood	Yadkin	Lee	Warren		Edgecombe	Robeson
Henderson	Yancey	Montgomery			Gates	Sampson
Jackson					Greene	Tyrrell
					Halifax	Washington
					Hertford	Wayne
					Hyde	Wilson
					Johnston	

2. REDEVELOPMENT PROJECTS

- (a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not meet the criteria below will be

awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any geographic set-aside.

- (b) The following are required to qualify as a Redevelopment Project:
- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
 - (ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.
 - (iii) Any required demolition has been completed or is scheduled for completion in 2022~~1~~ (not including the project buildings). For a Rental Assistance Demonstration (RAD) project under the U.S. Department of Housing and Urban Development (HUD), any required demolition must be scheduled to be completed by June 30, 2023~~2~~.
 - (iv) A unit of local government initiated the project, evidenced by a Request for Proposal, Council minutes, or other documentation stipulating the project was originally envisioned by the local government, and has invested community development resources in the Half Mile area within the last ten years. A resolution will not suffice as evidence of local government initiation.
 - (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:
 - donation of at least one parcel of land,
 - waiver of impact, tap, or related fees normally charged,
 - commitment to lend/grant at least \$750,000 in the Metro region and \$250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding, or
 - is part of the RAD program under HUD.

The Agency will require official documentation of each element of local government participation.

~~3. DISASTER RECOVERY~~

~~(a) Additional Tax Credits~~

~~Twelve point five percent (12.5%) of tax credits available will be added to the East region before the Rehabilitation Set Aside and before any allocations under the New Construction Set Aside.~~

~~(b) County Award Limits~~

~~Should each county with an eligible application in the East or Central region receive one new construction award and credits remain in the respective region, counties declared a federal disaster area (Individual Assistance designation) under Hurricane Florence are eligible to receive a second new construction award.~~

~~If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in no less than one award for Cumberland County in the Metro region. The initial maximum under II(F)(1)(b) will not apply to Cumberland County should that county be eligible for a second new construction award.~~

~~(c) Disaster Recovery Funds~~

~~Any new construction application in the counties below agrees to accept CDBG-DR funds as part of a tax credit award, should funding be available. The funds will require, at a minimum, not undertaking~~

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~~any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review as well as complying with Davis-Bacon wage requirements. Applicants will not request these funds as part of their application. Loan amounts will be determined by the Agency and used to reduce tax credit, RPP, and/or WILP requests (if applicable). The terms will be zero percent (0%) interest, twenty-year balloon (no payments).~~

Bladen	Cumberland	Jones	Pender
Brunswick	Craven	New Hanover	Robeson
Carteret	Duplin	Onslow	Scotland
Columbus	Edgecombe	Pamlico	Wayne

C. USDA RURAL DEVELOPMENT

Up to \$750,000 will be awarded to eligible rehabilitation and/or new construction project(s) identified by the U.S. Department of Agriculture, Rural Development (RD) state office as a priority. These projects will count towards the applicable set-asides and limits. The maximum award under this set-aside to any one Principal will be one project. Other RD applications will be considered under the applicable set-asides.

D. NONPROFIT AND CHDO SET-ASIDES, NATIONAL HOUSING TRUST FUND, AND CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

1. SET-ASIDES AND NATIONAL HOUSING TRUST FUND

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

(a) Nonprofit Set-Aside

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

(b) CHDO Set-Aside

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and

- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

(c) National Housing Trust Fund

To qualify for the National Housing Trust Fund, the project must:

- be located in a High Income county as designated in Section II(F)(2) and
- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See **Appendix J** for additional information.

2. CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

The Agency will award one (1) new construction project not to exceed \$1,000,000 which contains Choice Neighborhoods Implementation (CNI) funds, as determined by the Agency. Any Public Housing Authority involved in more than one application containing CNI funds will be required to indicate their priority project. Tax credits under this section II(G) will be taken from the total available after allocation to the Rehabilitation set-aside but prior to allocations under the New Construction set-aside. An award under this section II(G) will not count towards any county award limits described in section F(1) above. This set-aside will remain in each QAP through 2025.

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

- (a) The maximum awards to any one Principal will be a total of \$2,000,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards. No Principal can receive more than 2 new construction awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.
- (c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,200,000.

3. AGENCY-DESIGNATED BASIS BOOST

The Agency can boost the eligible basis of new construction projects committing to the targeting in Section IV(B)(2) or that are located in an Opportunity Zone by up to ten percent (10%). Projects using the DDA or QCT basis increase are not eligible under this section.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

- (a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set-aside, ~~except as specified under Section II(B)(3)(b).~~

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(b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see **Appendix K**), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share. See ~~Section II(B)(3)(b) for Cumberland County exception.~~

2. INCOME DESIGNATIONS

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used as a guide in making this determination was HUD's FY 2020~~1~~ Median Family Income.

High		Moderate		Low	
Buncombe	Guilford	Alamance	Macon	Alleghany	Lenoir
Brunswick	Henderson	Alexander	Mitchell	Anson	Martin
Cabarrus	Iredell	Beaufort	Nash	Ashe	McDowell
Camden	Johnston	Burke	Onslow	Avery	Montgomery
Carteret	Madison	Caldwell	Pamlico	Bertie	Northampton
Chatham	Mecklenburg	<u>Caswell</u>	Pasquotank	Bladen	Perquimans
Currituck	Moore	Catawba	Pender	Caswell	Richmond
Dare	New Hanover	Craven	Person	Cherokee	Robeson
Durham	Orange	Cumberland	Pitt	Chowan	<u>Rutherford</u>
Forsyth	Union	Davie	Polk	Clay	Sampson
Franklin	Wake	Davidson	Randolph	Cleveland	Scotland
Gaston	Watauga	Edgecombe	Rockingham	Columbus	Swain
		Gates	Rowan	Duplin	Tyrrell
		Granville	<u>Rutherford</u>	Graham	Vance
		Greene	Stanly	Halifax	Warren
		Harnett	Stokes	Hertford	Washington
		Haywood	Surry	<u>Hyde</u>	Wilkes
		Hoke		Jones	Yancey
		Hyde	Transylvania		
		Jackson	Wayne		
			<u>Wilkes</u>		
		Lee	Wilson		
		Lincoln	Yadkin		

G. OTHER AWARDS AND RETURNED ALLOCATIONS

- The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
- ~~[Reserved for 2023] An owner returning a valid allocation of 2018 tax credits between December 1, 2020 and December 31, 2020 will receive an allocation of the same amount of 2021 tax credits if:~~
~~the project has obtained a building permit and closed its construction loan;~~
~~the owner pays a fee equal to the original allocation fee amount upon the return; and~~
~~the project's design is the same as approved at full application (other than changes approved by the Agency).~~

~~None of the Principals for the returned project may be part of a 2021 application. Repeated use of this provision by a Principal may result in the Principal being considered not in good standing with the Agency.~~

An owner who received an award of 9% tax credits in 2019 or 2020 is eligible to receive an allocation of 2022 tax credits equal to or less than the amount of the original tax credits awarded to the project. The Owner must request an allocation of 2022 credits between October 1, 2021 and December 31, 2021.

The following will apply to those owners requesting a new tax credit allocation:

- Owners will return their allocation for an allocation of 2022 tax credits.
- Projects must comply with the requirements in the Qualified Allocation Plan for the original allocation and all representations made in the original awarded application (unless otherwise waived by the Agency).
- The Agency will not consider increased uses for purposes of this reallocation

3. The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the ~~2022~~ application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits.

January 22 ¹	Deadline for submission of preliminary applications (12:00 noon)
March 14 ⁵	Market analysts will submit studies to the Agency and Applicants
March 25 ⁶	Notification of final site scores
April 4 ⁵	Deadline for market-related project revisions (5:00 p.m.)
April 11 ²	Deadline for the Agency and Applicant to receive the revised market study, if applicable
May 13 ⁴	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency will also accept tax-exempt bond volume and 4% Tax Credit applications any time between May ~~24~~ and September ~~30~~ ~~October 1~~ (5:00 p.m.). When a preliminary application has been submitted in this timeframe, a schedule of milestones will be provided to the Applicant. The preliminary application submission date will determine when those milestones occur which will follow a time frame similar to the 9% Tax Credit round. The Agency will work with the Applicant to determine if the project will receive ~~2022~~ or ~~2023~~ volume cap. Full applications can be submitted no later than January ~~13~~⁴, ~~2023~~.

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

B. APPLICATION, ALLOCATION, MONITORING, AND PENALTY FEES

1. All Applicants are required to pay a nonrefundable fee of \$5,820 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,420 preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All Applicants are required to pay a nonrefundable processing fee of \$1,420 upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.86% of the project's total qualified basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of \$1,240 per unit (includes all units, qualified, unrestricted, and employee) prior to issuance of the project's IRS Form 8609. Any project utilizing income averaging or for which the Agency is the bond issuer must pay an additional monitoring fee of \$300 per unit.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. The Agency may assess Applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).
8. The Agency will assess \$1,500 for a Workforce Housing Loan Program closing and \$2,000 for an RPP closing.

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. Only one application can be submitted per site (new construction or rehabilitation).
4. For any rehabilitation application proposing to combine multiple existing properties into one property, the properties must be adjacent or not separated by more than one like parcel, or by more than a road, street, stream, or other similar property..
5. No Principal or Applicant can be in the ownership entity of more than five (5) new construction 9% Tax Credit preliminary or full applications.
6. The Agency will notify the appropriate unit of government about the project after submission of the full application.
7. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:

- (a) corporation, including nonprofits,
- (b) limited partnership, or
- (c) limited liability company.

Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2022-4 cycle.

A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. SITE EVALUATION (MAXIMUM 60 POINTS)

(a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
- (iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.
- (iv) To be eligible for RPP funds, the preliminary application must contain the Agency's "Notice of Real Property Acquisition" form. The form must be executed by all parties before or at the same time as the option or contract.

(b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. An application must have a minimum total score of 45 points.

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)

- Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))
- Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

(ii) AMENITIES (MAXIMUM 38 POINTS)

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases the establishment must be open to the general public and operating as of the preliminary application deadline with no announced closing prior to the notification of final site scores.

	<u>Driving Distance in Miles</u>			
<i>Primary Amenities</i> (maximum 26 points)	≤ 1.5	≤ 2	≤ 2.5	≤ 3.5
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> (maximum 12 points)	≤ 1.5	≤ 2	≤ 2.5	≤ 3.5
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

	<u>Driving Distance in Miles, Small Town*</u>			
<i>Primary Amenities</i> (maximum 26 points)	≤ 2.5	≤ 3 2.5	≤ 3.5	≤ 4.5
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> (maximum 12 points)	≤ 2.5	≤ 3 2.5	≤ 3.5	≤ 4.5
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.

Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management web site at <https://www.osbm.nc.gov/demog/municipal-population-estimates>. The Certified 2019 Population Estimates, Municipal Estimates – Alphabetically by municipality will be used to determine a town’s population. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park, library, and community center all between one point five (1.5) miles and two (2) miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown in satellite view map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s). Scattered site is defined as buildings on separate parcels, not connected by internal drive, and with separate entrances. A scattered site cannot have parcels separated by more than one like parcel, or by more than a road, street, stream, or other similar property.

The following establishments qualify as a Grocery:

Aldi	Galaxy Food Centers	Lidl	Trader Joe’s
Bi-Lo	The Fresh Market	Lowes Foods	Walmart Neighborhood Market
Bo’s Food Stores	Harris Teeter	Piggly Wiggly	Walmart Supercenter
Compare Foods	Harveys	Publix	Weaver Street Market
Earth Fare	Hopey & Company	Red & White	Wegmans
Fairvalue	IGA	Sav-Mor	Whole Foods
Family Foods	Ingle’s Market	Save-A-Lot	
Food Lion	Just Save	Sprouts	
Food Matters Market	Kroger	Super Target	

The following establishments qualify as Shopping:

Big Lots	Maxway	Super Target
Dollar General	Ollie’s Bargain Outlet	Walmart
Dollar Tree	Roses	Walmart Supercenter

Family Dollar	Roses Express
Fred's Super Dollar	Target

To qualify as a Pharmacy, the establishment must have non-medical general merchandise items for sale (not including pharmacies within hospitals).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store

Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies

Public Facility (any of the following):

- community center with scheduled activities operated by a local government
- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means; a greenway or trailhead does not qualify
- library operated by a local government open at least five days a week

Public School: non-alternative elementary, middle or high school (family properties only)

Senior Center: with scheduled activities operated by a local government (senior properties only)

Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center with a minimum of 4 operating establishments; any grocery or general merchandise establishment

A commitment of at least \$250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 6 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b) and be submitted as part of the preliminary application.

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- at a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 12 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks (excluding the proposed project site) and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)

- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks (not to include passenger light rail)
- high traffic corridor (500 feet for an interstate)
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) SITE NEGATIVE POINTS (NEGATIVE 3 POINTS)

Up to 3 points will be deducted from a site deemed to be unsuitable for housing. This determination recognizes a site may meet all site evaluation scoring criteria but not be suitable for housing regardless of having required zoning or local government support.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
 - (i) the project's capture rate,
 - (ii) the project's absorption rate,

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- (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
- (iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.
- (d) Applicants may not increase the total number of units after submission of the preliminary application. Unless 2022~~24~~ rent and income limits are released by the 9% preliminary application deadline, 2021~~0~~ rent and income limits must be used for the preliminary application, market study, and any market study revision. After the deadline for completing market-related project revisions Applicants may not increase:
 - (i) rents, irrespective of a decrease in utility allowances,
 - (ii) the number of income targeted units in any bedroom type, or
 - (iii) the number of units in any bedroom type.~~Applicants are prohibited from decreasing unit square footage after the deadline for completing market related revisions.~~
- (e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f) Projects may not give preferences to potential tenants based on:
 - (i) residing in the jurisdiction of a particular local government,
 - (ii) having a particular disability, or
 - (iii) being part of a specific occupational group (e.g. artists).
- (g) Age-restricted (senior) projects may not contain three or more bedroom units.
- (h) No project can have more than four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, 80% of area median income, and market rate.

B. RENT AFFORDABILITY

1. FEDERAL RENTAL ASSISTANCE

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated similar to a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)

An application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
 - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
 - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- (b) If the project is in a Moderate Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.

(c) If the project is in a Low Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. Targeting in subsection (a), (b) or (c) above counts towards this requirement.

3. INCOME AVERAGING

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following:

- (a) The income average for the property cannot exceed 60% of area median income,
- (b) The income average for any bedroom type cannot exceed 60% of area median income,
- (c) Market rate units are prohibited,
- (d) The election of Income Averaging at full application submission is irrevocable, and
- (e) For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609.

C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP

1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)

(a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- all units are detached single family houses or duplexes,
- serving persons with severe mobility impairments,
- development challenges resulting from being within or adjacent to a central business district,
- public housing redevelopment projects, or
- building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, ENERGY STAR, certifications for green programs, and any other costs not unique to the specific proposal.

Chart A	Chart B
\$895,000 -10	\$10096,000 -10

- (b) Lines 5 and 6 of the PDC description must total at least \$752,000 per unit and cannot exceed \$1102,000 per unit.
- (c) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process but in no case can lines 5 and 6 of the PDC exceed \$13045,000 per unit.

See Section VI(B) for other cost restrictions.

2. RESTRICTIONS ON RPP AWARDS

- (a) Projects requesting RPP funds must submit the Agency's "Notice of Real Property Acquisition" form with the preliminary application and may not:
- (i) request RPP funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
 - (ii) include market-rate units,
 - (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2013,
 - (iv) request less than \$150,000 or more than \$800,000 per project,
 - (v) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,
 - (vi) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, or
 - (vii) have a Principal listed on SAM.gov as being ineligible to receive federal funds.

The maximum award of RPP funds to any one Principal will be a total of \$1,600,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

Repayment of RPP and local government loans = $(NOI / 1.15) - \text{conventional debt service}$.

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan =	\$400,000			
local government loan =	\$200,000			
		Year 1	Year 2	Year 3 Year 4
Anticipated amount available for repayment		\$10,000	\$8,000	\$6,000 \$4,000
RPP principal and interest payments		\$6,667	\$5,333	\$4,000 \$2,667
local government P&I payments		\$3,333	\$2,667	\$2,000 \$1,333

Lien position will be determined by loan amount: the larger loan will have the higher lien position. For equal loan amounts, the local government will have the higher lien position.

- (c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.

- (d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency's requirements on a prior loan.
3. WORKFORCE HOUSING LOAN PROGRAM (Subject to appropriation)
- (a) Projects with 9% Tax Credits which meet the Agency's loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.
- (b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.
- (c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. The following percent of eligible basis will be the calculated loan amount. In no event will the loan amount exceed the statutory maximum.

County Income Designation	Percent of Eligible Basis	Statutory Maximum
High	4%	\$250,000
Moderate	10%	\$1,500,000
Low	16%	\$2,000,000

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds. Projects in the Metro geographic set-aside are ineligible to request WHLP. The maximum award of WHLP funds to any one Principal will be a total of \$2,000,000.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

- (a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, 2015 and January 1, 2020¹. Such Principal must:
- (i) be identified in the preliminary application as the Applicant under Section III(C)(76),
 - (ii) become a general partner or managing member of the ownership entity, and
 - (iii) remain responsible for overseeing the project and operation of the project for a period of at least two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.
- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.

- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

2. MANAGEMENT EXPERIENCE

The management agent must be eligible to be on the Approved Management Company List. To be Approved, the management agent must:

- (a) have at least one similar tax credit project in their current portfolio,
- (b) have a valid North Carolina real estate license and be registered with the North Carolina Secretary of State as of the full application deadline (excluding public housing authorities),
- (c) be requesting Key assistance timely and accurately (if applicable),
- (d) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable)
- (e) have at least one staff person in a supervisory capacity with regard to the project who has attended at least ~~three~~ one Agency sponsored trainings within the past 12 months (currently named Compliance 101, Advanced Compliance and DHHS Targeting and Key) -as of the full application deadline, and
- (f) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). Any management agent found to have implemented a rent increase on an existing tax credit property without the required Agency approval may be prohibited from serving as management agent for an application. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;

- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded 9% Tax Credits in 2021~~10~~ for which either the equity investment has not closed as of the full application deadline or the "10% test" has not been met;
- (i) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (j) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;
- (k) requested a qualified contract for a North Carolina tax credit property; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2022~~21~~ cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either
 - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 80% AMI and the market study indicates that such rents are feasible, or
 - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
 - Metro Region - one hundred and twenty (120) units
 - Central, East, and West Regions - eighty-four (84) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application submission.
4. All new construction projects must have at least twenty-four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

F. SPECIAL CRITERIA AND TIEBREAKERS

1. ENERGY STAR CERTIFICATION

New construction residential buildings must achieve ENERGY STAR Multifamily New Construction Program certification and comply with all energy efficiency standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

2. ~~CREDITS PER UNIT AVERAGE (MAXIMUM 2 POINTS)~~

~~The Agency will calculate the average federal tax credits per low-income unit requested on a geographic set-aside basis among new construction full applications and award points based on the following:~~

Within 4% of the average	2 points
Within 8% of the average	1 point

~~Any Applicant or Principal attempting to manipulate the average, as determined by the Agency, will have any application(s) they are involved with removed from the competition.~~

3. APPLICANT BONUS POINTS (MAXIMUM 2 POINTS)

~~An Applicant is entitled to two bonus points which can be awarded to one application (2 points) or two applications (1 point each) as part of the full application submission. No application can receive more than one two bonus points. No Principal or Applicant is entitled to more than two bonus points for all applications in which they may be involved. If a Principal is part of an application in which he/she is not the Applicant but that application receives two bonus points, the Principal will not be entitled to use a bonus point as an Applicant or Principal on another application. The same holds true for using one bonus point on two applications. Should an Applicant or Principal use more than 2 bonus points, the Agency will determine which application receives the bonus point(s), if at all.~~

4. UNITS FOR THE MOBILITY IMPAIRED

Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in **Appendix B** (incorporated herein by reference). THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES). If laws or codes do not require mobility impaired units for a project, a total of ten percent (10%) of the units must be fully accessible. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Program requirements of subsection (F)(5).

5. TARGETING PROGRAM

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

- (a) Targeting Unit Agreement
- (b) Owner Agreement to Participate (if applicable)
- (c) Property Profile
- (d) Tenant Selection Plan
- (e) Rental Assistance Plan (if applicable)
- (f) Affirmative Fair Housing Marketing Plan

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(5) may be fully or partially waived to the extent the Agency determines they are not feasible.

6. OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)

- (a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

7.5% of total units	1 point
10% of total units	2 points
15% of total units	3 points

Tax-exempt bond projects must contain 1 bedroom units totaling a minimum of 10% of total project units.

- (b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

<u>Alamance</u>	<u>Forsyth</u>	<u>Onslow*</u>
<u>Buncombe</u>	<u>Gaston</u>	<u>Orange</u>
<u>Burke</u>	<u>Guilford</u>	<u>Pitt</u>
<u>Cabarrus</u>	<u>Henderson</u>	<u>Robeson</u>
<u>Caldwell*</u>	<u>Iredell</u>	<u>Rowan*</u>
<u>Craven*</u>	<u>Johnston*</u>	<u>Wake</u>
<u>Cumberland</u>	<u>Mecklenburg</u>	<u>Wayne</u>
<u>Durham</u>	<u>New Hanover</u>	<u>Wilson</u>

**These counties will no longer be listed as DHHS priority counties after the 2022 QAP cycle.*

7. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

8. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) First Tiebreaker: The county with the least number of 9% tax credit units produced over the last 5 years (see **Appendix L** for listing of units produced by county).
- (b) Second Tiebreaker: The project requesting the least amount of federal tax credits per low-income unit based on the Agency's equity needs analysis.
- (c) Third Tiebreaker: The project with the lowest average income targeting.
- (d) Fourth Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (e) Fifth Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

| G. DESIGN STANDARDS

All proposed measures must be shown in the application to receive points.

1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) Use of brick veneer or masonry products on building exteriors.

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to 25 points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

To be eligible for an allocation under Section II(A), a project must:

- (a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,

- |
- (b) have been placed in service on or before December 31, 2006~~5~~,
 - (c) require rehabilitation expenses in excess of \$25,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
 - (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
 - (e) not be feasible using tax-exempt bonds (as determined by the Agency),
 - (f) not have received an Agency loan in the last five years,
 - (g) not be deteriorated to the point of requiring demolition,
 - (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
 - (i) have total replacement costs of less than \$140,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B** (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.

- (b) Applications will have a reduced likelihood of receiving an award of tax credits if the Agency determines the property has not been properly maintained and any current owner will remain part of the new ownership.
- (c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (d) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

| V. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

- 1. Projects that serve as a component of an overall public housing revitalization effort.
- 2. Rehabilitation of existing rent restricted housing.
- 3. Rehabilitation of projects consisting of entirely market-rate units.
- 4. Adaptive re-use projects.
- 5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

- 1. All projects must meet the requirements under Section IV(F)(5).
- 2. Rehabilitation applications must:
 - (a) have been placed in service on or before December 31, 2006~~5~~,
 - (b) require rehabilitation expenses in excess of \$15,000 per unit,
 - (c) not have an acquisition cost in excess of seventy percent (70%) of the total replacement costs,

- (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
 - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project in any state. The project must have been placed in service between January 1, 2015 and January 1, 2021~~0~~. Such Principal must:
- be identified in the preliminary application as the Applicant under Section III(C)(6),
 - become a general partner or managing member of the ownership entity, and
 - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

1. PROJECTS WITH HISTORIC TAX CREDITS

Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

2. NONPROFIT SET-ASIDE

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing,
- (d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

- (a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.

- (b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.
- (c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

4. APPRAISALS

The Agency will not allow the project budget to include more for land or lease costs than the lesser of its appraised market value or the purchase or lease price. Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. Comparable properties used in the appraisal must be in reasonable proximity to the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

8. SMOKE-FREE HOUSING

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

1. LOAN UNDERWRITING STANDARDS

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds must use current Low HOME rents for fifteen percent (15%) of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. OPERATING EXPENSES

- (a) New construction (excluding adaptive re-use): minimum of \$3,600 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): minimum of \$3,800 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.

3. EQUITY PRICING

- (a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above \$0.90⁴ will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.
- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. RESERVES

- (a) Rent-up Reserve: Required for all except tax-exempt bond projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and

operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency. This reserve must stay with the project at the time of investor exit.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. This reserve must stay with the project at the time of investor exit.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

5. DEFERRED DEVELOPER FEES (NEGATIVE 2 POINTS)

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

Deferment of more than twenty-five (25%) of the total developer fee will result in a deduction of 2 points.

6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must be on lender's letterhead, must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property, and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.
- (b) For all projects proposing public permanent financing, binding commitments on lender's letterhead are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.

- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Any Owner Investment listed as a source cannot exceed \$10,000.
- (e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

7. DEVELOPER FEES

- (a) Developer fees shall be up to ~~\$15,250~~ \$15,000 per unit for new construction projects and twenty-eight point five percent (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.
- (b) Notwithstanding the amount calculated in subsection (7)(a), the developer fee for any project shall be a maximum of ~~\$1,800,350,000~~ \$1,800,000 (the maximum for projects with tax-exempt bonds is ~~\$32,700,000~~).
- (c) Contractor general requirements shall be limited to six percent (6%) of hard costs.
- (d) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (e) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

14. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. ALLOCATION TERMS AND REVOCATION

1. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:
 - (a) changing the anticipated or final sources (amount, terms, or provider), including equity;
 - (b) increasing the anticipated or final uses by more than two percent (2%);
 - (c) altering the designs approved by
 - the Agency at full application, or
 - local building code office,including amenities, site layout, floor plans and elevations (Approved Design);
 - (d) starting construction, including sitework;
 - (e) increasing rents for new construction units;
 - (f) increasing rents for rehabilitation units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);
 - (g) occupying units;
 - (h) any other change to the awarded application.

At its discretion, the Agency can request any documentation related to project costs. If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.
3. IRS Form 8609 will not be issued until:
 - (a) submission of a Final Cost Certification by an independent auditor that complies with the Agency's requirements;
 - (b) the owner documents attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved

seminars); the management agent documents attendance at an Agency sponsored tax credit compliance seminar within the previous 12 months;

- (c) monitoring fees have been paid;
 - (d) the project has been built according to the Approved Design;
 - (e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;
 - (f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and
 - (g) submission of a listing of the name and address for all contractors and subcontractors indicating if there exists an identity of interest with the Owner and a statement from each representing the entity will comply with all applicable employment rules and regulations.
4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.
5. Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations, and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms. Owners may not claim tax credits in any taxable year unless the Extended Use Agreement is in effect and appropriately recorded.
6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
- (a) accuracy of all representations made to the Agency, including application uploads,
 - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
 - (c) provision and maintenance of amenities for the benefit of the tenants, and
 - (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

B. COMPLIANCE MONITORING

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and online reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(6).

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

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 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02H .1401-.1405 and amend the rule cited as 15A NCAC 02H .1301.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main/proposed-rules>

Proposed Effective Date: March 1, 2022

Public Hearing:

Date: November 4, 2021

Time: 6:00 p.m.

Location: A virtual public hearing will be held by webinar as follows:

WebEx Events meeting link:
<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e654c6f5c2c373a09e7107df42864e546>

Event number (access code): 2425 226 6629

Event password: X2p8DPmSf8p

You may elect to have the system call you, or you may call +1-415-655-0003 US TOLL and enter the access code above.

If you wish to attend the hearing, you must register before 12:00 p.m. on Thursday, November 4, 2021.

Registration information can be found on the DEQ Proposed Rule webpage at the following link:
<https://forms.office.com/g/FhPHLB99a8>

QR Code for Registration Form:



Reason for Proposed Action: As a result of the US EPA's Navigable Waters Protection Rule: Definition of "Waters of the United States" Rule (effective June 22, 2020), a subset of wetlands classified under State law are no longer subject to federal Clean Water Act jurisdiction, and therefore no longer eligible for permitting the mechanism available under the Clean Water Act to authorize impacts to these wetlands. Permanent rules are being adopted to replace temporary rules that were adopted to create a replacement permitting mechanism for these wetlands.

Comments may be submitted to: Sue Homewood, NCDWR, 450 W. Hanes Mill Rd, Winston-Salem, NC 27105; phone (336) 776-9693; email sue.homewood@ncdenr.gov

Comment period ends: December 1, 2021

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☒ Local funds affected
- ☒ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require State review after October 22, 2001 and that require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, "discharge" shall be the deposition of dredged or fill material (e.g. fill, earth, construction debris, soil, etc.).

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated

classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of Engineers (USACE) or its designee determines that a particular stream or open water is not regulated under Section 404 of the Clean Water Act, and the stream or open water meets the definition of an isolated water in Paragraph (f) of this Rule, then discharges to that stream or open water or wetland shall be covered by this Section. If the ~~U.S. Army Corps of Engineers~~ USACE or its designee determines that a particular wetland is not regulated under Section 404 of the Clean Water Act, that wetland meets the definition of an isolated wetland in Paragraph (f) of this Rule, and that isolated wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated>), <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/newam-manual>), then discharges to that wetland shall be covered by this Section. Where the USACE has not confirmed the extent and/or location of the wetlands or surface waters, ~~the~~ The Division shall verify ~~confirm~~ the ~~determination, extent, extent~~ and location of isolated wetlands and isolated classified streams using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1305**~~(b)~~(a)** of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

- (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These ~~individual~~ individual permits do not require approval by the U.S. Environmental Protection Agency.
- (2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits. The Director may require an Individual Permit for any project if it is deemed in the public's best interest or determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened

aquatic species, or will degrade the waters so that existing uses of the waters or downstream waters are precluded.

(d) Discharges resulting from activities that are deemed permitted as described in Rule .1305(a) of this Section, or that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

(e) The following are exempt from this Section:

- (1) Activities described in 15A NCAC 02B .0230;
- (2) Discharges to the following features if they were constructed for erosion control or stormwater management purposes:
 - (A) ~~isolated man-made ponds~~ ponds, isolated man-made wetlands;
 - (B) ~~or isolated man-made ditches; ditches constructed for [erosion control or] stormwater management purposes;~~
- (3) Discharges to any man-made isolated pond;
- (4) Discharges to any isolated wetland not regulated under Section 404 of the Clean Water Act that is not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/newam-manual>);
- (5) Discharges to isolated ephemeral streams as defined by 15A NCAC 02B .0610;
- ~~(5)~~(6) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits;
- ~~(6)~~(7) Discharges for water dependent structures as defined in 15A NCAC 02B .0202; and
- ~~(7)~~(8) A discharge resulting from an activity if:
 - (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to October 22, 2001;
 - (B) The project requires a State permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required State permits prior to October 22, 2001;
 - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to October 22, 2001; or
 - (D) The applicant has been authorized for a discharge into isolated wetlands or

isolated waters for a project that has established a Vested Right under North Carolina law prior to October 22, 2001.

(f) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:

- (1) "Class SWL wetland" means the term as defined at 15A NCAC 02B ~~.0401~~, .0231(a).
- (2) "Class UWL wetland" means the term as defined at 15A NCAC 02B ~~.0401~~, .0231(a).
- (3) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities, regardless of what entities undertake such other actions.
- (4) "Director" means the Director of the Division.
- (5) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (6) "Isolated Wetland" means:
 - (A) a wetland confirmed to be isolated by the USACE; or
 - (B) a wetland that has been determined to be non-jurisdictional by the USACE but has not been confirmed to be isolated as indicated in Part (A) of this Subparagraph, and for which an evaluation confirmed by the Division documents that a significant nexus is not present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States memorandum dated December 02, 2008 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated>).
- (7) "Isolated Waters" means:
 - (A) a surface water confirmed to be isolated by the USACE; or
 - (B) a surface water that has been determined to be non-jurisdictional by the USACE but has not been confirmed to be isolated as indicated in Part (A) of this Subparagraph, and for which an evaluation confirmed by the Division documents that a significant nexus is not present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States memorandum dated December 02, 2008. [2008 (available online at: [~~er resources/water quality-permitting/401-buffer-permitting-branch/401-isolated\).~~](https://deq.nc.gov/about/divisions/wat</u>

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- (8) "Project" means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers.
- ~~(6)(9)~~ "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.
- ~~(7)(10)~~ "Wetland" means the term as defined in 15A NCAC 02B .0202.

Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18.

SECTION .1400 – DISCHARGES TO FEDERALLY NON-JURISDICTIONAL WETLANDS AND FEDERALLY NON-JURISDICTIONAL CLASSIFIED SURFACE WATERS

15A NCAC 02H .1401 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource management determinations regarding federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters. For the purpose of this Section, "discharge" shall be the deposition of dredged or fill material (e.g. fill, earth, construction debris, soil.) Isolated wetlands and isolated waters as defined in Rule .1301 of this Subchapter shall be regulated pursuant to Section .1300 of this Subchapter. Federally jurisdictional wetlands and federally jurisdictional classified waters that the U.S. Army Corps of Engineers (USACE) or its designee has determined to be subject to Section 404 of the Clean Water Act shall be regulated pursuant to Section .0500 of this Subchapter.

(b) This Section outlines the application and review procedures for permitting of discharges into federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters that have been listed in 15A NCAC 02B .0300. If the USACE or its designee determines that a particular water or wetland is not regulated under Section 404 of the Clean Water Act, and the particular water or wetland is not an isolated wetland or isolated water as defined in Rule .1301 of this Subchapter, then discharges to that water or wetland shall be covered by this Section. Where the USACE has not previously confirmed the extent and/or location of the federally non-jurisdictional wetlands, the Division shall confirm the extent and location of federally non-jurisdictional wetlands using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1)(available free of charge on the internet at: <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4532/>) and subsequent regional supplements (available free of charge on the internet at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/). Where the USACE has not previously confirmed the extent and/or location of the federally

non-jurisdictional streams, the Division shall confirm the extent and location of federally non-jurisdictional streams using the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010). Any disputes by the applicant or landowner over wetland or stream determinations made by the Division shall be referred to the Director in writing within 60 calendar days of written notification from the Division. The Director's determination shall be subject to review as provided in Article 3 of G.S. 150B.

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1405(a) of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

- (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These individual permits do not require approval by the U.S. Environmental Protection Agency.
- (2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits. The Director may require an Individual Permit for any project if it is deemed in the public's best interest or determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or will degrade the waters so that existing uses of the waters or downstream waters are precluded.

(d) Discharges resulting from activities that are deemed permitted as described in Rule .1405(a) of this Section, or that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not be considered to remove existing uses of the wetland or classified surface waters.

(e) The following are exempt from this Section:

- (1) Activities described in 15A NCAC 02B .0230;
- (2) Discharges to the following features if they were constructed for erosion control or stormwater management purposes:
 - (A) federally non-jurisdictional man-made wetlands, or
 - (B) federally non-jurisdictional man-made ditches;
- (3) Discharges to federally non-jurisdictional man-made ponds;

- (4) Discharges to federally non-jurisdictional ephemeral streams as defined by 15A NCAC 02B .0610;
- (5) Discharges of treated effluent into federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits; and
- (6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202.

(f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213, and Rule .1301 of this Subchapter.

Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c).

15A NCAC 02H .1402 FILING APPLICATIONS

(a) Any person seeking issuance of an individual permit or Certificate of Coverage under a general permit for discharges resulting from activities that affect federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters shall file with the Director, at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, or 512 N Salisbury Street, Raleigh, NC 27604, an original and one copy of an application for a permit or submit one complete application electronically via the following website:

https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. The application shall be made on a form provided or approved by the Division, available electronically via the following website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application>. The application shall include at a minimum the following:

- (1) the date of application;
- (2) the name, address, and phone number of the property applicant. If the applicant is not the property owner(s), name, address, and phone number of the property owners(s);
- (3) if the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be registered with the NC Secretary of State's Office to conduct business in NC;
- (4) the nature of the discharge, including cumulative impacts to all wetlands and waters (isolated wetlands, isolated classified surface waters, federally non-jurisdictional wetlands, federally non-jurisdictional classified surface waters, jurisdictional wetlands, and jurisdictional waters) that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;

- (6) the location and extent of the discharge, stating the municipality, if applicable, and the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule;
- (8) a map(s) with scales and north arrows that is legible to the reviewer and of sufficient detail to delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out the discharge; the location, dimensions, and type of any structures that affect federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters for use in connection with the discharge; and the location and extent of the federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters within the boundaries of the lands; and
- (9) a signature by the applicant or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter shall be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge.

(b) The Division may request in writing, and the applicant shall furnish, any additional information necessary to clarify or complete the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .1405 of this Section.

(c) If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (b) of this Rule, then the applicant shall submit an explanation detailing the reasons for omission of the information. The final decision regarding the completeness of the application shall be made by the Division based upon the information required in Paragraphs (a) and (b) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(d) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the evaluation in Rule .1405 of this Section. For the purpose of review of an application, the applicant shall allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable for those places, upon the presentation of credentials, and advanced notice of at least three days.

(e) Joint applications with 401 certification and/or isolated wetlands permitting submitted to the Division shall suffice for an application pursuant to this Rule, so long as the application contains all of the information required by this Rule and provided

that the applicant specifically indicates that authorization is sought under this Rule.

(f) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the Division from the Division of Coastal Management.

Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1).

15A NCAC 02H .1403 PUBLIC NOTICE AND PUBLIC HEARING

(a) The Division shall provide public notice for proposed general permits. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices>. Notice shall be made at least 30 calendar days prior to issuance of the general permit by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a general permit.

(b) Notice of each pending application for an individual permit shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.

(c) The notice for each pending application for an individual permits shall set forth:

- (1) the name and address of the applicant;
- (2) the action requested in the application;
- (3) the nature and location of the discharge; and
- (4) the proposed date of final action to be taken by the Division on the application.

The notice shall also state where additional information is available online and on file with the Division. Information on file shall be made available upon request between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding State holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-6.2.

(d) The public notice requirement for an individual permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management, pursuant to 15A NCAC 07J .0206, the U.S. Army Corps of Engineers according to their established procedures, by a joint notice by the Division for an individual certification in accordance with Rule .0503 of this Subchapter, or by a joint notice by the Division for an individual permit in accordance with Rule .1303 of this Subchapter.

(e) Any person who desires a public hearing on a general permit or an individual permit application shall submit a written request to the to the Division at the address listed in Rule .1402 of this Section. In order to be considered by the Director, the request must be received by the Division within 30 calendar days following the public notice.

(f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and whether the project is likely to have a significant adverse effect upon water quality, including state or federally listed

endangered or threatened aquatic species, or will degrade the waters so that existing uses of the waters or downstream waters are precluded, the Division shall notify the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place, and format of the hearing. The notice may be combined with the notice required under Paragraph (c) of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

(g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division shall add the email address of any such person to an email listerv and follow procedures set forth in Rule .0503(g) of this Subchapter.

(h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the Department or the U.S. Army Corps of Engineers.

Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(a)(3); 143-215.3(c).

15A NCAC 02H .1404 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) The Director shall issue the permit or Certificate of Coverage, deny the application, provide notice of hearing pursuant to Rule .1403 of this Section, or request additional information within 60 calendar days after receipt of the application. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to issue the permit or Certificate of Coverage, deny the application, provide notice of hearing, or request additional information within 60 calendar days shall be considered an approval of the application, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) The final decision is to be made pursuant to a public hearing;
- (3) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision; or
- (4) Information necessary to the Director's decision is unavailable.

(b) The Director shall issue the permit or Certificate of Coverage, deny the application, or request additional information within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall be considered an approval of the application by the Director, unless Subparagraphs (a)(1), (3), or (4) of this Rule apply.

(c) Any permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to ensure compliance with this Section, including written post-discharge notification to the Division.

(d) Modification or Revocation of permit or Certificate of Coverage:

(1) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification by the Director for violation of conditions of the permit or Certificate of Coverage; and

(2) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

(e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application, the Director shall specify the reasons for the denial.

(f) Certificates of Coverage for general permits shall be issued for a period of five years, after which time the approval shall be void, unless the discharge is complete or an extension is granted pursuant to Paragraph (h) of this Rule. The permit shall become enforceable when a Certificate of Coverage is issued.

(g) Individual permit or Certificate of Coverage renewals shall require a new complete application.

(h) A Permittee may request in writing that the Division grant an extension before the permit expires. An extension may be granted by the Division for a time period of one additional year, provided that the construction has commenced or is under contract to commence before the permit expires.

(i) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c).

15A NCAC 02H .1405 REVIEW OF APPLICATIONS

(a) The following activities shall be deemed to be permitted:

(1) Discharges resulting from activities that impact less than 1/2 acre of federally non-jurisdictional classified open waters (e.g., lakes, ponds) for the entire project are deemed to be permitted provided they comply with the conditions listed in Subparagraph (4) of this Paragraph, and it shall not be necessary for the Division to issue permits for these activities.

(2) Discharges resulting from activities that impact less than a total of 150 linear feet of federally non-jurisdictional classified intermittent and perennial streams for the entire project are deemed to be permitted provided they comply with the conditions listed in Subparagraph (4) of this Paragraph, and it shall not be necessary for the Division to issue permits for these activities.

(3) Discharges resulting from activities that impact less than or equal to 1/10 acre of federally non-jurisdictional wetlands for the entire project are deemed to be permitted provided they comply with the conditions listed in Subparagraph (4)

of this Paragraph, and it shall not be necessary for the Division to issue permits for these activities.

(4) Conditions which shall be met for projects deemed to be permitted:

(A) Erosion and sediment control practices are required and shall equal at a minimum those required by the N.C. Division of Energy, Mineral, and Land Resources (DEMLR) or its local delegated program for the Sedimentation Pollution Control Act and shall be in compliance with all DEMLR or appropriate local delegated program specifications governing the design, installation, operation, and maintenance of such practices in order to help assure compliance with the appropriate turbidity and other water quality standards;

(B) All erosion and sediment control practices placed in federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters shall be removed and the original grade restored within two months after the DEMLR or appropriate local delegated program has released the specific drainage area within the project;

(C) Uncured or curing concrete shall not come into direct contact with waters of the State;

(D) All work in or adjacent to federally non-jurisdictional intermittent or perennial streams shall be conducted so that the flowing stream does not come in contact with the disturbed area; and

(E) Measures shall be taken to ensure that the hydrologic functions of any remaining federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters are not adversely affected by the discharge.

(b) The Division shall issue an individual permit or a Certificate of Coverage under a general permit upon determining that the proposed activity will comply with State water quality standards, which includes designated uses, numeric criteria, narrative criteria, and the State's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

(1) has no practical alternative. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in

size, configuration, or density of the proposed project and all alternative designs, that the basic project purpose cannot be practically accomplished in an economically viable manner, which would avoid or result in less adverse impact to federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters;

(2) has avoided and minimized impacts to federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;

(3) would not cause or contribute to a violation of water quality standards;

(4) would not result in secondary or cumulative impacts that cause or contribute to, or will cause or contribute to, a violation of downstream water quality standards; and

(5) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule;

(6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or endangered species, is necessary to meet a demonstrated public need.

(c) Replacement by mitigation of unavoidable losses of existing uses in federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters shall be reviewed in accordance with all of the following guidelines:

(1) The Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project;

(2) Total impacts to less than 1/10 acre of federally non-jurisdictional wetlands shall not require compensatory mitigation. The mitigation ratio for federally non-jurisdictional wetlands shall be 1:1. Impacts to non-jurisdictional wetlands shall not be combined with the project impacts to wetlands that are regulated under Section 404 of the Clean Water Act or isolated wetlands for the purpose of determining when impact thresholds that trigger a mitigation requirement are met;

(3) Total impacts to less than 300 linear feet of federally non-jurisdictional perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per stream shall not require compensatory mitigation. The mitigation ratio for federally non-jurisdictional stream impacts shall be 1:1;

- (4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;
- (5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act or Section 1300 of this Subchapter may be used to satisfy the requirements of this Paragraph;
- (6) Acceptable methods of mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (2) or (3) of this Paragraph may be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation;
- (7) Mitigation for impacts to federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and
- (8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c).

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03J .0404; 03R .0119, amend the rules cited as 15A NCAC 03K .0507; 03R .0110, .0111, .0118, readopt with substantive changes the rules cited as 15A NCAC 03I .0101, .0104, .0105, .0109, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0501-.0505; 03K .0101-.0109, .0201, .0202, .0204, .0205, .0207-.0209, .0301, .0302, .0304, .0305, .0401, .0505; 03L .0101-.0103, .0105, .0201-.0205; 03M .0201, .0202, .0204, .0205, .0503; 03N .0104, .0105; 03O .0101-.0105, .0107, .0109-.0111, .0113, .0114, .0203, .0205-.0211, .0301-.0303, .0401-.0406, .0502, .0504; 03P .0101, .0102,

.0201-.0203, .0301-.0303; 18A .0135, .0302, .0425, and repeal through readoption the rules cited as 15A NCAC 03K .0111; 03P .0304; 18A .0303, .0304 and .0912.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/mfc-proposed-rules>

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: October 27, 2021

Time: 6:00 p.m.

Location: WebEx Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=ed0e9941d47aa734c7988fa208a056f76>

Event number: 161 493 7847 Event password: 1234 Event phone number: 1-415-655-0003

Reason for Proposed Action:

15A NCAC 03I .0109 RESEARCH SANCTUARIES
15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS
In accordance with G.S. 150B-21.3A, one rule in 15A NCAC 03I is proposed for readoption and two rules in 15A NCAC 03J and 03R are proposed for adoption to restrict highly efficient fishing gears on artificial reefs in State ocean waters to protect all species of finfish, as a complement to the restrictions for artificial reefs in the Exclusive Economic Zone for snapper grouper species. The rules set requirements for research sanctuaries and artificial reefs in State waters, define highly efficient gears, and codify the geographic boundaries of the 13 existing artificial reef sites in State ocean waters. The purpose of the State artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear. All harvest by spearfishing gear would be restricted to recreational limits.

15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

15A NCAC 03O .0205 SHELLFISH LEASE RENEWAL
15A NCAC 03O .0206 SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW

15A NCAC 03O .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES

15A NCAC 03O .0209 ASSIGNMENT OF SHELLFISH LEASES AND FRANCHISES

15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES

15A NCAC 03O .0211 FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

PROPOSED RULES

In accordance with G.S. 150B-21.3A, nine rules 15A NCAC 03 are proposed for readoption and repeal through readoption to further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study completed by the Department of Environmental Quality, Division of Marine Fisheries, and Marine Fisheries Commission. Most rule changes conform to three other recently approved shellfish lease rules. Additional changes are proposed to continue supporting the efficiency of the State's shellfish lease program and production. Specifically, changes seek to streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases.

15A NCAC 03I .0113 **BIOLOGICAL SAMPLING**
 15A NCAC 03I .0118 **DISPOSAL OF EVIDENCE**
 15A NCAC 03J .0101 **FIXED OR STATIONARY NETS**
 15A NCAC 03J .0110 **SEINES**
 15A NCAC 03J .0302 **RECREATIONAL USE OF POTS**
 15A NCAC 03K .0101 **PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**
 15A NCAC 03K .0102 **RAKES PROHIBITED**
 15A NCAC 03K .0105 **RECREATIONAL HARVEST OF SHELLFISH**
 15A NCAC 03K .0106 **TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT**
 15A NCAC 03K .0108 **DREDGES AND MECHANICAL METHODS PROHIBITED**
 15A NCAC 03K .0201 **OYSTER HARVEST MANAGEMENT**
 15A NCAC 03K .0202 **CULLING REQUIREMENTS FOR OYSTERS**
 15A NCAC 03K .0204 **MECHANICAL METHODS FOR OYSTERING PROHIBITED**
 15A NCAC 03K .0207 **OYSTER SIZE AND HARVEST LIMIT EXEMPTIONS**
 15A NCAC 03K .0301 **SIZE AND HARVEST LIMITS OF CLAMS**
 15A NCAC 03K .0302 **MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM**
 15A NCAC 03K .0304 **PROHIBITED TAKING OF CLAMS**
 15A NCAC 03K .0305 **CLAM SIZE AND HARVEST LIMIT EXEMPTIONS**
 15A NCAC 03K .0401 **POLLUTED AREA PERMIT REQUIREMENTS**
 15A NCAC 03K .0505 **SEA SCALLOPS SIZE LIMIT AND TOLERANCE**
 15A NCAC 03L .0101 **SHRIMP HARVEST RESTRICTIONS**
 15A NCAC 03L .0102 **WEEKEND SHRIMPING PROHIBITED**
 15A NCAC 03L .0103 **PROHIBITED NETS, MESH LENGTHS, AND AREAS**
 15A NCAC 03L .0105 **RECREATIONAL SHRIMP LIMITS**
 15A NCAC 03M .0201 **STRIPED BASS REQUIREMENTS; GENERAL**

15A NCAC 03M .0202 **STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: INTERNAL WATERS**
 15A NCAC 03M .0204 **STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: ATLANTIC OCEAN**
 15A NCAC 03M .0205 **STRIPED BASS; PROHIBITED TRAWLING**
 15A NCAC 03M .0503 **FLOUNDER**
 15A NCAC 03N .0104 **PROHIBITED GEAR, PRIMARY NURSERY AREAS**
 15A NCAC 03N .0105 **PROHIBITED GEAR, SECONDARY NURSERY AREAS**
 15A NCAC 03O .0301 **ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
 15A NCAC 03O .0302 **AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
 15A NCAC 03O .0303 **POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSES**
 15A NCAC 03O .0401 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD**
 15A NCAC 03O .0402 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS**
 15A NCAC 03O .0403 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD REVIEW**
 15A NCAC 03O .0404 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA**
 15A NCAC 03O .0405 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION DOCUMENTATION**
 15A NCAC 03O .0406 **STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL CERTIFICATION**
In accordance with G.S. 150B-21.3A, 40 rules in 15A NCAC 03 are proposed for readoption that relate to general rules, gear, shellfish, crustacea, finfish, nursery areas, and licenses. The rules have been reviewed to conform to rulemaking requirements and contain clarifying and technical changes.
 15A NCAC 03I .0101 **DEFINITIONS**
 15A NCAC 03I .0104 **INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS**
 15A NCAC 03I .0114 **RECORDKEEPING REQUIREMENTS**
 15A NCAC 03J .0105 **PURSE SEINES**
 15A NCAC 03J .0109 **LONG HAUL AND SWIPE NET REQUIREMENTS**
 15A NCAC 03J .0305 **TROT LINES (MULTIPLE HOOK OR MULTIPLE BAIT)**
 15A NCAC 03K .0205 **MARKETING OYSTERS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**
 15A NCAC 03K .0507 **MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**
 15A NCAC 03O .0101 **PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**
 15A NCAC 03O .0102 **PROCEDURES AND REQUIREMENTS TO RENEW LICENSES,**

ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

- 15A NCAC 03O .0103 AUXILIARY VESSELS**
- 15A NCAC 03O .0104 COMMERCIAL UNLOADING OF FISH**
- 15A NCAC 03O .0105 MUSSEL DEALERS**
- 15A NCAC 03O .0107 LICENSE REPLACEMENT AND FEES**
- 15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**
- 15A NCAC 03O .0110 LICENSE REFUNDS**
- 15A NCAC 03O .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS**
- 15A NCAC 03R .0111 PURSE SEINES PROHIBITED**

In accordance with G.S. 150B-21.3A, 18 rules in 15A NCAC 03 are proposed for readoption that relate to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, most changes are conforming and technical in nature. Small benefits are expected related to removing a time requirement for obtaining a tournament license and by broadening the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors at fish dealer locations by including electronic trip tickets. A proposed change to marking requirements for commercial trotlines would likely incur a small financial cost to select fishermen. The change is expected to make trotlines easier to identify and monitor, as well as result in consistent marking requirements across gear types. A small opportunity cost is expected for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture operation permit. The permit consolidates all existing shellfish lease requirements into a single management tool and over half of lease holders already hold the permit. Having all shellfish lease holders subject to the same permit requirement facilitates the tracking and monitoring of shellfish leases overall and the timely handling of potential public health issues, ultimately enhancing the resource.

- 15A NCAC 03J .0301 POTS**
- 15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS**
- 15A NCAC 03L .0202 CRAB TRAWLING**
- 15A NCAC 03L .0203 CRAB DREDGING**
- 15A NCAC 03L .0204 CRAB POTS**
- 15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES**
- 15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES**
- 15A NCAC 03R .0118 CRAB HARVEST MANAGEMENT AREAS**

In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for readoption and amendment that conform rule language with new blue crab and gear management measures approved through Amendment 3 to the N.C. Blue Crab Fishery Management Plan. All of these new measures are already in effect via proclamation following adoption of the plan by the Marine Fisheries Commission in February 2020. The proposed changes codify these existing requirements in permanent rule. A proposed change to marking requirements for pots would likely incur a small financial cost to select fishermen. The change is expected to make pots easier to identify and monitor, as well as result in consistent marking requirements across gear types. The Division

of Marine Fisheries estimates at least half of commercial fishermen using this gear already meet the requirements.

- 15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED**
- 15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS**
- 15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING**
- 15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL**
- 15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER**
- 15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS**
- 15A NCAC 03O .0111 SURRENDER OF LICENSES**
- 15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES**
- 15A NCAC 03O .0502 PERMIT CONDITIONS**
- 15A NCAC 03O .0504 SUSPENSION AND REVOCATION OF PERMITS**
- 15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW**

In accordance with G.S. 150B-21.3A, 11 rules in 15A NCAC 03 are proposed for readoption that conform rules related to permit and license suspensions and revocations to standards of the Administrative Procedure Act (G.S. 150B) and increase clarity of the rules. The majority of changes are conforming and clarifying amendments that incur no impacts. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses; provide significant context to the differences in license and permit suspensions, revocations, and requirements; and provide administrative alternatives to increase overall Division of Marine Fisheries efficiency. Changes proposed to 15A NCAC 03J .0501 for Pound Net Set Permits would delegate narrow proclamation authority to the division director to waive the 30-day pound net set requirement for the southern flounder fishery that has seasons that are now less than 30 days in length, maintaining compliance with the requirements of Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. In all, these proposed changes provide benefits in terms of increased division efficiency and increased protection of marine and estuarine resources.

- 15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES**
- 15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY**
- 15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**
- 15A NCAC 03P .0203 DISPOSITION OF REQUESTS FOR DECLARATORY RULING**
- 15A NCAC 03P .0301 FORM AND CONTENTS OF PETITIONS FOR RULEMAKING**
- 15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION**
- 15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION**

15A NCAC 03P .0304 RECURSE TO DENIAL OF THE PETITION

In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for re adoption and repeal through re adoption that conform administrative procedures rules to the requirements of the Administrative Procedure Act, namely G.S. 150B-4, Declaratory rulings, G.S. 150B-20, Petitioning an agency to adopt a rule, and several articles of 150B that address administrative hearings and their judicial review. Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. Additional proposed changes make minor technical and clarifying amendments. Overall, the proposed changes would increase efficiency in contested case hearings, declaratory rulings, and petitions for rulemaking. One proposed change in 15A NCAC 03P .0301 removes the burden for petitioners to submit 15 hard copies of a petition since the majority of petitions are submitted electronically.

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS

15A NCAC 03K .0107 DEPURATION OF CLAMS AND OYSTERS

15A NCAC 03K .0109 SHELLFISH HARVEST TAGS

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

15A NCAC 03K .0209 OYSTER SANCTUARIES

15A NCAC 18A .0135 PERMITS

15A NCAC 18A .0302 PERMITS

15A NCAC 18A .0303 RELAYING PERMITS

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

15A NCAC 18A .0425 DEALER TAGS

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

In accordance with G.S. 150B-21.3A, 12 rules in 15A NCAC 03 and 18A are proposed for adoption and repeal through re adoption that relate to crustacea and shellfish and set specific requirements for shellfish management areas, depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. Session Law 2011-145 abolished the Division of Environmental Health and transferred the Shellfish Sanitation and Recreational Water Quality Section to the Division of Marine Fisheries under a Type I transfer. Prior to this change, the Division of Environmental Health advised the Division of Marine Fisheries on certain matters relating to public health of crustacea and shellfish and the Division of Environmental Health rules bore this out by one division advising the other. Now that the authority for these rules all fall under the Marine Fisheries Commission, amendments are proposed to rules that have overlapping content, including the repeal through re adoption of three rules.

In addition, amendments are proposed to increase efficiency for the Division of Marine Fisheries by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Additional proposed amendments to shellfish management areas would broaden the Division of Marine Fisheries director's

proclamation authority to address variable conditions. Changes to crustacea and shellfish permits and dealer tags would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would enhance the protection of public health by strengthening the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit, and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557

Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>

Comment period ends: November 30, 2021

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 email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule(s) is automatically subject to legislative review: S.L. 2017-190 and S.L. 2019-198: 15A NCAC 03I .0104; S.L. 2019-198: 15A NCAC 03I .0105, .0109, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0404, .0501; 03K .0101-.0104, .0107-.0109, .0202, .0204, .0205, .0207-.0209, .0301, .0304, .0305, .0401, .0505, .0507; .03L .0102, .0103, .0105, .0201-.0205; 03M .0201, .0202, .0205, .0503; 03N .0104, .0105; 03O .0101, .0102, .0104, .0109, .0111, .0113, .0114, .0211, .0301-.0303, .0405, .0502, .0504; 18A .0135, .0302 and .0425

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☒ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

All definitions set out in G.S. 113, Subchapter IV and the following additional terms shall apply to this Chapter:

(1) ~~Enforcement~~ enforcement and management terms:

(a) ~~Commercial Quota. Total~~
"Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.

(b) ~~Educational Institution. A~~
"Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of ~~Environment and Natural Resources~~ Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.

(c) ~~Internal Coastal Waters or Internal Waters. All~~ "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.

(d) ~~Length of finfish. length of finfish:~~

(i) ~~Curved fork length. A~~
"Curved fork length" means a length 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.

(ii) ~~Fork length. A~~ "Fork length" means a length 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 length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

(iii) ~~Pectoral fin curved fork length. A~~ "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the

pectoral fin and the top of the caudal keel.

(iv) ~~Total length. A~~ "Total length" means a length 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.

(e) "Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources.

(f) "Polluted" means any shellfish growing waters:

(i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous;

(ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall with public health significance;

(iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;

(iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous; or

(v) where the Division of Marine Fisheries is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.

(e)(g) ~~Recreational Possession Limit. Restrictions~~ "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

- (f)(h) ~~Recreational Quota. Total~~
"Recreational quota" means total
quantity of fish allocated for harvest
for a recreational purpose.
- (g)(i) ~~Regular Closed Oyster Season.~~
"Regular closed oyster season" means
March 31 through October 15, unless
amended by the Fisheries Director
through proclamation authority.
- (h)(j) ~~Scientific Institution. One~~ "Scientific
institution" means one of the
 following entities:
 (i) ~~An~~ an educational institution
 as defined in this Item;
 (ii) A state or federal agency
 charged with the
 management of marine or
 estuarine resources; or
 (iii) A professional organization
 or secondary school working
 under the direction of, or in
 compliance with mandates
 from, the entities listed in
~~Subitems (h)(i)~~ Sub-items
(j)(i) and (ii) of this Item.
- (i) ~~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.~~
- (2) ~~Fishing Activities:~~ fishing activities:
 (a) ~~Aquaculture operation. An~~
"Aquaculture operation" means an
operation that produces artificially
propagated stocks of marine or
estuarine resources resources, or other
non-native species that may thrive if
introduced into Coastal Fishing
Waters, or obtains such stocks from
permitted sources for the purpose of
rearing on private bottom (with or
without the superadjacent water
column) or in a controlled
environment. A controlled
environment provides and maintains
throughout the rearing process one or
more of the following:
 (i) food;
 (ii) predator protection;
 (iii) salinity;
 (iv) temperature controls; or
 (v) ~~water circulation,~~
~~utilizing technology not found in the~~
~~natural environment.~~
- (v) ~~water circulation, utilizing~~
~~technology not found in the~~
~~natural environment.~~
- (b) ~~Attended. Being~~ "Attended" means
being in a vessel, in the water or on the
shore, and immediately available to
work the gear and be within 100 yards
of any gear in use by that person at all
times. Attended does not include being
in a building or structure.
- (c) ~~Blue Crab Shedding. The~~ "Blue crab
shedding" means 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:
 (i) food;
 (ii) predator protection;
 (iii) salinity;
 (iv) temperature controls; or
 (v) 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.
- (d) ~~Depuration. Purification~~ "Depuration"
means mechanical purification or the
removal of adulteration from live
oysters, clams, or mussels by any
~~natural or~~ artificially controlled
means.
- (e) ~~Long Haul Operations. Fishing~~ "Long
haul operation" means fishing a seine
towed between two vessels.
- (f) ~~Peeler Crab. A~~ "Peeler crab" means a
blue crab that has a soft shell
developing under a hard shell and
having a white, pink, or red-line or rim
on the outer edge of the back fin or
flipper.
- (g) ~~Possess. Any~~ "Possess" means any
actual or constructive holding whether
under claim of ownership or not.
- (h) ~~Recreational Purpose. A~~ "Recreational
purpose" means a fishing activity that
is not a commercial fishing operation
as defined in G.S. 113-168.
- (i) ~~Shellfish marketing from leases and~~
~~franchises. The~~ "Shellfish marketing
from leases and franchises" means the
harvest of oysters, clams, scallops, or
mussels from privately held shellfish

- bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (j) ~~Shellfish planting effort on leases and franchises.~~ The "Shellfish planting effort on leases and franchises" means the process of obtaining authorized cultch materials, seed shellfish, and ~~polluted~~ shellfish stocks from ~~polluted waters~~ and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (k) ~~Shellfish production on leases and franchises.~~ "Shellfish production on leases and franchises" means:
- (i) ~~The~~ the culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
- (ii) ~~The~~ the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (l) ~~Swipe Net Operations.~~ Fishing "Swipe net operations" means fishing a seine towed by one vessel.
- (m) ~~Transport. Ship.~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (n) ~~Use. Employ.~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- (3) ~~Gear.~~ gear:
- (a) ~~Bunt Net.~~ The "Bunt net" means 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) ~~Channel Net.~~ A "Channel net" means a net used to take shrimp that 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 vessel.
- (c) ~~Commercial Fishing Equipment or Gear.~~ All "Commercial fishing equipment or gear" means all fishing equipment used in Coastal Fishing Waters except:
- (i) ~~Cast~~ cast nets;
- (ii) ~~Collapseable~~ 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;
- (iii) ~~Dip~~ 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;
- (iv) ~~Gigs~~ gigs or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;
- (v) ~~Hand~~ hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
- (vi) ~~Hook and line and bait and line~~ hook and line, and bait and line equipment other than multiple-hook or multiple-bait trotline;
- (vii) ~~Landing~~ landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
- (viii) ~~Minnow~~ minnow traps when no more than two are in use;
- (ix) ~~Seines~~ seines less than 30 feet in length;
- (x) ~~Spears,~~ spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
- (d) ~~Corkline.~~ The "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
- (e) ~~Dredge.~~ A "Dredge" means 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.
- (f) ~~Fixed or stationary net.~~ A "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (g) ~~Fyke Net.~~ An "Fyke net" means 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).
- (h) ~~Gill Net.~~ A "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (i) ~~Headrope.~~ The "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
- (j) ~~Hoop Net.~~ An "Hoop net" means 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).
- (k) ~~Lead.~~ A "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
- (l) ~~Mechanical methods for clamming.~~ Dredges, "Mechanical methods for clamming" means 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.
- (m) ~~Mechanical methods for oystering.~~ Dredges, "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
- (n) ~~Mesh Length.~~ The "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- (o) ~~Pound Net Set.~~ A "Pound net set" means 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 holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
- (p) ~~Purse Gill Nets.~~ Any "Purse gill net" means 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.
- (q) ~~Seine.~~ A "Seine" means 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 length, webbing diameter, or method in which it is used.
- (4) ~~Fish habitat areas.~~ The "Fish habitat areas" means the 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:
- (a) ~~Anadromous fish nursery areas.~~ Those "Anadromous fish nursery areas" means those areas in the riverine and

- estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (b) ~~Anadromous fish spawning areas.~~ Those "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (c) ~~Coral:~~ "Coral" means:
- (i) ~~Fire~~ fire corals and hydrocorals (Class Hydrozoa);
 - (ii) ~~Stony~~ stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
- (d) ~~Intertidal Oyster Bed.~~ A "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (e) ~~Live rock.~~ Living "Live rock" means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
 - (iv) ~~Sponges~~ sponges (Phylum Porifera);
 - (v) ~~Hard~~ hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
- (vi) Bryozoans (Phylum Bryozoa);
- (vii) ~~Tube~~ tube worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);
- (viii) ~~Mussel~~ mussel banks (Phylum Mollusca: Gastropoda); and
- (ix) ~~Acorn~~ acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- (f) ~~Nursery areas.~~ Areas "Nursery areas" means areas that 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 that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) ~~Shellfish producing habitats.~~ Historic "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to 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.
- (h) ~~Strategic Habitat Areas.~~ Locations "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) ~~Submerged aquatic vegetation (SAV) habitat.~~ Submerged "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:

- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
- (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, 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 this Rule or ~~Rules 03K-.0304~~ 15A NCAC 03K .0304 and .0404, to apply to or conflict with the non-development control activities authorized by that Act.

- (5) ~~Licenses,~~ licenses, permits, leases and franchises, and record keeping:

- (a) ~~Assignment.~~ Temporary "Assignment" means 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, and is still the responsible party for the license.

- (b) ~~Designee.~~ Any "Designee" means 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.

- (c) ~~For Hire Vessel.~~ As "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in ~~state~~ State waters or when the vessel originates from or returns to a North Carolina port.

- (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.

- ~~(d)(e)~~ Holder. A "Holder" means a person who has been lawfully issued in ~~his or her~~ the person's name a license, permit, franchise, lease, or assignment.

- ~~(e)(f)~~ Land. "Land" means:

- (i) ~~For~~ for commercial fishing operations, when fish reach the shore or a structure connected to the shore.

- (ii) ~~For~~ for purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.

- (iii) ~~For~~ for recreational fishing operations, when fish are retained in possession by the fisherman.
- (f)(g) ~~Licensee.~~ Any "Licensee" means any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (g)(h) ~~Logbook. Paper~~ "Logbook" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.
- (h)(i) ~~Master. Captain~~ "Master" means captain or operator of a vessel or one who commands and has control, authority, or power over a vessel.
- (i)(j) ~~New fish dealer.~~ Any "New fish dealer" means 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. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (j)(k) ~~Office of the Division.~~ Physical "Office of the Division" means physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island, and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
- (k)(l) ~~Responsible party.~~ Person "Responsible party" means the 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 statutes and rules.
- (l)(m) ~~Tournament Organizer.~~ The "Tournament organizer" means the person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

- (m)(n) ~~Transaction. Act~~ "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- (n)(o) ~~Transfer. Permanent~~ "Transfer" means 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.
- (o)(p) ~~Trip Ticket. Paper~~ "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

Authority G.S. 113-134; 113-174; 113-182; 143B-289.52.

15A NCAC 03I .0104 INTRODUCE, TRANSFER, OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS

(a) ~~In order to~~ To protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it is shall be unlawful, except for American eels imported from Maryland, Virginia, or South Carolina for use in an aquaculture operation, without first obtaining a permit Permit to Introduce, Transfer, or Hold Imported Marine and Estuarine Organisms from the Fisheries Director or without obtaining live marine and or estuarine organisms from a permit holder; permittee to:

- (1) ~~To~~ place into the coastal fishing waters of the state State live marine and or estuarine organisms not native non-native to the state. State. For the purpose of this Rule, this action is an introduction.
- (2) ~~To~~ place into the coastal fishing waters of the state State live marine and or estuarine organisms which that are native but which that originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.
- (3) ~~To~~ hold or maintain any live marine or estuarine organism organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the state State in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in 15A NCAC 03I .0101. Rule .0101 of this Section.
- (4) ~~To~~ sell for bait any live marine or estuarine organism organisms, including non-native species that may thrive if introduced into Coastal Fishing Waters, imported into the state. State.

(b) Any person desiring to obtain a Permit to Introduce, ~~Transfer~~ Transfer, or Hold Imported Marine and Estuarine Organisms ~~must make written~~ shall submit a complete application to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769,

Morehead City, NC ~~28557-0769~~; 28557. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500. ~~In order for~~ For the Fisheries Director to determine the level of risk to any native marine or estuarine resource or the environment, the applicant shall ~~provide~~; also provide a certification from a:

- (1) ~~A certification from a~~ pathologist that a sample of 60 organisms from proposed shipments are disease free or a certification from a governmental veterinary service that the organisms to be shipped were produced in an area or facility free of diseases posing a risk to North Carolina's marine or estuarine resources, or their environment, as determined by the Fisheries Director; and
- (2) ~~A certification from a~~ biologist or veterinarian that macroscopic and microscopic examination indicates the shipment contains only those species species, sizes, and quantities identified on the permit application.

(c) The Fisheries Director shall require disinfection, quarantine or destruction of organisms and transfer materials as a condition of the permit, upon finding the importation poses a risk to North Carolina's marine or estuarine resources, or their environment.

(d) The Fisheries Director may hold public meetings prior to granting permits for activities specified in Paragraph (a) of this Rule to gather information concerning risks to native marine or estuarine resources or the environment.

Authority G.S. 113-134; 113-170; 113-182; 143B-289.52; S.L. 2017-190; S.L. 2018-114.

15A NCAC 03I .0105 LEAVING DEVICES UNATTENDED

(a) It is ~~shall be~~ unlawful to leave stakes, anchors, nets, buoys, or floating devices in ~~any coastal fishing waters when~~ Coastal Fishing Waters if such devices are not being employed in commercial fishing operations operations, except as otherwise provided by rule or General Statute.

(b) It shall be unlawful to use or possess fishing equipment in Coastal Fishing Waters in violation of this Section or that contains edible species of fish unfit for human consumption.

~~(b)(c)~~ It is ~~shall be~~ unlawful to leave pots in ~~any coastal fishing waters~~ Coastal Fishing Waters for more than five consecutive days, ~~when~~ days if such pots are not being employed in commercial fishing operations, except upon a timely and sufficient showing of hardship as ~~defined set forth in Subparagraph (b)(2)~~ Paragraph (c) of this Rule or as otherwise provided by General Statute. The Fisheries Director may, by proclamation, modify the five-day requirement if necessary due to hurricanes, tropical storms, other severe weather events recognized by the National Weather Service, or other variable conditions pursuant to 15A NCAC 03H .0103. (4) Agents of the Fisheries Director may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director ~~must~~ shall be removed by the individual ~~utilizing~~ using the pot within five days of

attachment in order to demonstrate that the pot is being employed in commercial fishing operations.

~~(d)(2)~~ For the ~~purposes of Paragraph (b) of this Rule only,~~ purpose of this Rule, a timely and sufficient showing of hardship in a commercial fishing operation shall be ~~written notice given a~~ statement in writing from the owner of the pot or the owner's immediate family, as defined in G.S. 113-168, submitted to the Fisheries Director that a mechanical breakdown of the pot owner's vessel(s) vessel currently registered with the Division of Marine Fisheries under pursuant to G.S. 113-168.6, or the death, illness illness, or incapacity of the owner of the pot or his the owner's immediate family, as defined in G.S. 113-168, family prevented or will prevent employing such pots in commercial fishing operations for more than five consecutive days. The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days without being employed in fishing operations, and shall state, in addition to the following, Statements and supporting documentation shall be mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Mailing a statement does not automatically exempt a fisherman from the requirements of this Rule. The statement shall specify the number and specific location of the pots, and the date on by which the pots will be employed in commercial fishing operations or removed from coastal fishing waters: Coastal Fishing Waters, and:

~~(A)(1)~~ in the case of a mechanical breakdown, the notice shall state the commercial fishing vessel registration Commercial Fishing Vessel Registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, and description of the arrangements being made to repair the vessel or a copy of the work order showing the name, ~~address~~ address, and phone number of the repair facility; or

~~(B)(2)~~ in the case of the death, ~~illness~~ illness, or incapacity of the owner of the pot or ~~his the~~ owner's immediate family, ~~the notice shall state the name of the owner or immediate family member, member and either the date of death, the date and nature death or the date of the illness or incapacity.~~ The Fisheries Director may require a doctor's verification of ~~that the illness or incapacity; incapacity occurred.~~

~~(c)(3)~~ The Fisheries Director may, by proclamation, modify the five day requirement, if necessary due to hurricanes, severe weather or other variable conditions. ~~Failure~~ It shall be unlawful to fail to employ in commercial fishing operations or remove from coastal fishing waters Coastal Fishing Waters all pots for which notice of a hardship request is received granted under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule: hardship.

(e) It is unlawful to set or have any fishing equipment in coastal fishing waters in violation of this Section or which contains edible species of fish unfit for human consumption.

Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52.

**15A NCAC 03I .0109 ~~ARTIFICIAL REEFS AND~~
RESEARCH SANCTUARIES**

(a) The Fisheries Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment in and around any ~~artificial reef or~~ research sanctuary. Any closure or restriction shall be for no more than one year, subject to renewal at the discretion of the Fisheries Director. ~~is subject to the following conditions:~~

- (1) ~~Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.~~
- (2) ~~Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of the Fisheries Director.~~
- (3) ~~The economic effect of the closure or restriction on fishing interests with respect to the size and location of the area and the nature of the equipment affected shall be considered before such closure is made and findings shall be made in writing which findings shall be available for public inspection at the office of Division of Marine Fisheries in Morehead City.~~

(b) It ~~is~~ shall be unlawful to engage in any fishing activity, use any equipment, or conduct any other operation ~~which that~~ has been prohibited by proclamation issued under this authority.

Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03I .0113 BIOLOGICAL SAMPLING

It ~~is~~ shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or ~~his~~ the Fisheries Director's agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from fish in the licensee's possession. Such data shall include, but is not limited to, species identification, length, weight, age, sex, number, area of catch, harvest method, and quantity of catch.

Authority G.S. 113-134; 113-170.3; ~~113-170.4;~~ 113-174.1; 113-182; 143B-289.52.

**15A NCAC 03I .0114 RECORDKEEPING
REQUIREMENTS**

(a) It ~~is~~ shall be unlawful for a licensed fish dealer:

- (1) ~~To~~ to fail to complete accurately and legibly all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;
- (2) ~~To~~ to fail to provide to the Division of Marine Fisheries a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;

(3) ~~To~~ to fail to make paper copies or electronic copies of trip tickets available at the dealer location for inspection by Marine ~~Patrol~~ Fisheries inspectors;

(4) ~~To~~ to fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:

- (A) ~~Initiate~~ initiate electronic file transfer of trip tickets; and
- (B) ~~Continue~~ continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;

(5) ~~To~~ to fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and

(6) ~~To~~ to fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic ~~files~~ files, and accounts for a period of not less than three years.

(b) It ~~is~~ shall be unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:

- (1) ~~A~~ a current and valid license or permit to sell the type of fish being offered and if a vessel is used, the ~~commercial fishing vessel registration;~~ Commercial Fishing Vessel Registration; and
- (2) ~~Complete~~ complete and accurate information on harvest method and area of catch and other information required by the Division, in accordance with G.S. 113-168.2 and G.S. 113-169.3.

(c) It ~~is~~ shall be unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing ~~thereon the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped.~~ the following items:

- (1) name of the consignee;
- (2) name of the shipper;
- (3) date of the shipment;
- (4) name of fish being shipped; and
- (5) quantity of each fish being shipped.

In the event the fisherman taking the fish is also a licensed fish dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to licensed fish dealers are exempt from this ~~Paragraph of this Rule.~~ Paragraph.

(d) It ~~is~~ shall be unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the ~~record-keeping~~ recordkeeping requirements in G.S. 113-168.2(i).

(e) It ~~is~~ shall be unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine ~~Patrol~~ Fisheries inspectors or other ~~agent~~ agents of the Fisheries Director written documentation of purchase showing ~~thereon the name of the licensed dealer, name of the purchaser,~~ date of the purchase, and the quantity of each species purchased. the following items:

- (1) name of the licensed fish dealer;
- (2) name of the purchaser;
- (3) date of the purchase;
- (4) name of fish purchased; and
- (5) quantity of each fish purchased.

(f) It ~~is~~ shall be unlawful for a holder of a Fish ~~Dealer's~~ Dealer License to have fish in possession at a licensed location without written documentation from a licensed fish dealer or a completed North Carolina ~~Marine Fisheries Trip Ticket~~ trip ticket to show the quantity and origin of all fish.

Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 113-182; 143B-289.52.

15A NCAC 03I .0118 DISPOSAL OF EVIDENCE

It ~~is~~ shall be unlawful for any person to dispose of ~~fish or fish,~~ parts thereof, of fish, fishing equipment or gear, or other matter ~~in any manner;~~ preparatory to, during, or subsequent to the taking of fish after any communication or signal from an inspector, or after the approach of an inspector or an enforcement vessel.

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

SUBCHAPTER ~~3J~~ 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0101 FIXED OR STATIONARY NETS

It ~~is~~ shall be unlawful to use or set fixed or stationary ~~nets;~~ nets for any of the following:

- (1) ~~In in~~ in the channel of the Intracoastal ~~Waterway or in any other location where it may constitute a hazard to navigation;~~ Waterway;
- (2) ~~So as~~ to block more than two-thirds of ~~any~~ a natural or manmade waterway, sound, river, bay, creek, ~~inlet~~ inlet, or ~~any~~ other body of water;
- (3) ~~In in~~ in the middle third of ~~any marked~~ a navigation ~~channel;~~ channel marked by State or federal agencies; or
- (4) ~~In the channel third of the following rivers: Roanoke, Cashie, Middle, Eastmost, Chowan, Little, Perquimans, Pasquotank, North, Alligator, Pungo, Pamlico, and Yeopim.~~ in a location where it may interfere with navigation.

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

15A NCAC 03J .0105 PURSE SEINES

(a) It ~~is~~ shall be unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard ~~shad~~ shad, or ~~pinfish,~~ as further restricted by Paragraphs (b) and (c) of this Rule. pinfish.

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

- (1) ~~In in~~ in the Atlantic Ocean ~~during the periods and within an area as~~ described:
 - (A) by Session Law 2012-190; and
 - (A)(B) ~~In in~~ in 15A NCAC 03R ~~0111,~~ .0111.
 - (B) By Session Law 2007-320.
- (2) ~~Except except~~ as provided in Subparagraph (5) of this Paragraph, Paragraph (c) of this Rule, between January 16 and May 14 in:
 - (A) Internal waters, internal waters; and
 - (B) the Atlantic Ocean within one mile of shore.
- (3) ~~Between between~~ 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.
- (4) from beyond one mile of shore in the Atlantic Ocean and transported to port between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day.
- (5) from beyond one mile of shore in the Atlantic Ocean and transported to port between the hours of sunrise and sunset on the following holidays:
 - (A) Memorial Day;
 - (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and
 - (C) Labor Day.
- (5)(c) 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 (d) of this Rule between April 1 and May 14, and may impose any ~~or all~~ of the following restrictions:
 - (1) specify time;

- (2) specify area;
- (A)(3) Specify ~~specify~~ means and methods by area which may be employed in the taking; methods;
- (4) specify record keeping requirements;
- (5) specify season; and
- (B)(6) Limit the quantity; and specify quantity.
- (C) Require submission of statistical and biological data.

(d) The internal waters specified in Paragraph (c) of this Rule are as follows:

- (1) Pamlico Sound;
- (2) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek;
- (3) Neuse River east of a line from Wilkinson Point to Cherry Point;
- (4) Adams Creek;
- (5) Core Sound and its tributaries;
- (6) Back Sound, the Straits, and North River;
- (7) Newport River;
- (8) North River; and
- (9) Bogue Sound.

~~(e)(e)~~ Menhaden, Atlantic thread herring, gizzard ~~shad~~ 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~~ 2012-190 and Subparagraphs (b)(5) and (b)(6) of this Rule, ~~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 holidays:~~
 - (A) ~~Memorial Day;~~
 - (B) ~~Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and~~
 - (C) ~~Labor Day.~~

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

- (1) Immediately within two hours of the spill, notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries Communications Center of such spill; the spill by phone at 800-682-2632 or 252-726-7021; and
- (2) Report 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; 113-187; 113-221.1; 143B-289.52.*

15A NCAC 03J .0109 ~~LONG-HAUL FISHING OPERATIONS, IDENTIFICATION~~ LONG HAUL AND SWIPE NET REQUIREMENTS

It is ~~shall be~~ unlawful to ~~tow or pull~~ use a net in a ~~long-haul long haul~~ or swipe net fishing ~~excluding operations with nets made entirely of monofilament and having a mesh length of three inches or greater; operation:~~

- (1) ~~Without~~ without a floating buoy ~~that shall be international orange, no less than five inches in diameter, and no less than 11 inches in length attached a minimum of every 100 yards along the cork line. The buoy shall be international orange and shall be no less than five inches in diameter and no less than 11 inches in length; and line;~~
- (2) ~~Without~~ without a flag, flag that shall be square in shape, international orange in color, ~~and~~ at least 24 inches by 24 inches in ~~size, size~~ flying in the rigging so as to be visible when approaching the vessel from any ~~direction, direction; and~~
- (3) ~~In in the internal coastal waters~~ Internal Coastal Waters south and west of a line beginning on the west shore of Pamlico Sound at Bluff Point at a point 35° 19.5333' N – 76° 09.3333' W; running southeasterly to Ocracoke Island to a point 35° 08.0000' N – 75° 55.0000' W, W; without escape panels as follows:
 - (a) ~~For for~~ for long haul operations, two panels four feet deep and six feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed. The bailed, with~~ panels ~~shall be~~ in the water while fish are ~~harvested, harvested;~~
 - (b) ~~For for~~ for swipe net operations, two panels three feet deep and five feet long ~~shall be~~ installed with the entire panel within 10 feet of the staff on the end of the bunt net from which the fish are being ~~bailed. The bailed, with~~ panels ~~shall be~~ in the water while fish are ~~harvested, harvested;~~
 - (c) ~~The the~~ the upper edge of one panel ~~shall be~~ installed within 12 to 24 inches of the float line and the lower edge of the other panel ~~shall be~~ installed within 12 to 24 inches of the lead ~~line, line; and~~
 - (d) ~~The panels shall be~~ constructed of unobstructed trawl rings with ~~an a~~ a ~~minimum~~ inside diameter ~~no less than of one and nine-sixteenth inches (1 9/16"). The inches, with the rings shall be fastened together at a maximum of four points per ring.~~

Authority G.S. 113-134; 113-182; ~~143B-289.4~~; 143B-289.52.

15A NCAC 03J .0110 SEINES

It ~~is~~ shall be unlawful to use seines 30 feet or over in length for recreational purposes unless the net is marked by attaching to the corkline ~~one~~ a floating buoy, any shade of hot pink in ~~color, which~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The ~~owner~~ gear owner's last name and initials shall ~~always~~ be identified on the attached buoy using an engraved buoys buoy or by attaching engraved metal or plastic tags to the buoy. Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used, one of the following:

- (1) ~~Gear~~ gear owner's current motor boat registration number; or
- (2) ~~Owner's~~ owner's U.S. vessel documentation name.

Authority G.S. 113-134; 113-173; 113-182; 143B-289.52.

SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

(a) It ~~is~~ shall be unlawful to use pots except during time periods and in areas specified herein:

- (1) ~~In Coastal Fishing in Internal Waters from December 1 through May 31, except that that:~~
 - (A) in the Northern Region designated in 15A NCAC 03R .0118(1) all pots shall be removed from Internal Waters from January 15 1 through February 7. January 31. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 15 through February 7 this removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots.
 - (B) in the Southern Region designated in 15A NCAC 03R .0118(2) all pots shall be removed from Internal Waters from March 1 through March 15.
- (2) ~~From in Internal Waters from June 1 through November 30, north and east of the Highway 58 Bridge at Emerald Isle: 30 in the Northern Region designated in 15A NCAC 03R .0118(1):~~
 - (A) ~~In in~~ in areas described in 15A NCAC 03R .0107(a); .0107(a).
 - (B) ~~To to~~ to allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for

~~or and~~ and designate the areas described in 15A NCAC 03R .0107(b); .0107(b) or any part thereof, for the use of pots.

- (3) ~~From in Internal Waters from May 1 through November 30 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation. Southern Region designated in 15A NCAC 03R .0118(2), the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.~~
- (4) in the Atlantic Ocean from May 1 through November 30 the Fisheries Director may, by proclamation, specify time periods and areas for the use of pots.

~~The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.~~

- (b) It ~~is~~ shall be unlawful to use pots:
 - (1) in any navigation channel marked by State or Federal agencies; or
 - (2) in any turning basin maintained and marked by the North Carolina Ferry Division.
- (c) It ~~is~~ shall be unlawful to use pots in a commercial fishing ~~operation, operation~~ unless each pot is marked by attaching a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. that Buoys shall be of solid foam or other solid buoyant material ~~and~~ no less than five inches in diameter and no less than five inches in length. ~~Buoys may be of any color except yellow or hot pink or any combination of colors that include yellow or hot pink. The owner gear owner's last name and initials shall always be identified on the attached buoy by using an engraved buoys buoy or by attaching engraved metal or plastic tags attached to the buoy. The If a vessel is used, the identification shall also include one of the following:~~
 - (1) gear owner's current ~~motorboat~~ motor boat registration number; or
 - (2) gear owner's U.S. vessel documentation ~~name;~~ or name.
 - (3) ~~gear owner's last name and initials.~~
- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.
- (e) It ~~is~~ shall be unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.
- (f) It ~~is~~ shall be unlawful to use pots to take eels with mesh lengths smaller than one-half inch by one-half inch, ~~except until January 1, 2017 eel pots of any mesh length with an escape panel that is at least four inches square with a mesh length of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots shall be allowed. inch.~~
- (g) ~~It is~~ Except for unbaited pots or pots baited with a male crab, it shall be unlawful to use crab pots in Coastal Fishing Waters unless each pot contains no less than ~~two three~~ three unobstructed escape rings that are at least two and ~~five sixteenths~~ five-sixteenths inches inside diameter and; and ~~located in the opposite outside~~

panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:

- ~~(1) unbaited pots;~~
- ~~(2) pots baited with a male crab; and~~
- ~~(3) pots set in areas and during time periods described in 15A NCAC 03R .0118.~~
- (1) for pots with a divider:
 - (A) two escape rings shall be located on opposite panels of the upper chamber of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the divider in the upper chamber of the pot.
- (2) for pots without a divider:
 - (A) two escape rings shall be located on opposite panels of the pot; and
 - (B) at least one escape ring shall be located within one full mesh of the corner and one full mesh of the bottom of the pot.

For the purpose of this Rule, a "divider" shall mean a panel that separates the crab pot into upper and lower sections.

(h) The Fisheries Director may, by proclamation, ~~exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:~~ restrictions for pots:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify requirements for a commercial fishing operation or for recreational purposes;
- (5) specify record keeping and reporting requirements;
- ~~(4)(6)~~ specify seasons; and season, including a closed season for removal of all pots from Internal Waters;
- (7) specify species; and
- ~~(5)(8)~~ specify quantity.

(i) ~~It is shall be~~ unlawful to use more than 150 crab pots per vessel in Newport River.

(j) ~~It is shall be~~ unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(k) ~~It is shall be~~ unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

(l) ~~It is shall be~~ unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, "leads" or "leaders" ~~are defined as shall mean~~ any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish shall not be a pot.

Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03J .0302 RECREATIONAL USE OF POTS

(a) ~~It is shall be~~ unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching ~~one~~ a floating buoy, any shade of hot pink in ~~color, which~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner gear owner's last name and initials shall always be identified on the attached buoy using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such If a vessel is used, the identification shall also include the owner's last name and initials and if a vessel is used, one of the following:

- (1) ~~Gear gear~~ owner's current motor boat registration ~~number, number;~~ or
- (2) ~~Owner's~~ owner's U.S. vessel documentation name.

(b) ~~It is shall be~~ unlawful for a person to use more than one crab pot attached to the shore along privately owned land or to a privately owned pier without possessing a valid Recreational Commercial Gear License.

Authority G.S. 113-134; 113-173; 113-182; 143B-289.52.

15A NCAC 03J .0305 TROT LINES (MULTIPLE HOOK OR MULTIPLE BAIT)

(a) ~~It is shall be~~ unlawful to use multiple hook or multiple bait trotlines for recreational purposes unless ~~such trotlines are each~~ multiple hook or multiple bait trotline is marked by attaching to them at each end one a floating buoy, any shade of hot pink in ~~color, which~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner gear owner's last name and initials shall always be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such If a vessel is used, the identification shall also include owner's last name and initials and if a vessel is used, one of the following:

- (1) ~~Gear gear~~ owner's current motor boat registration ~~number, number;~~ or
- (2) ~~Owner's~~ gear owner's U.S. vessel documentation name.

(b) ~~It shall be~~ unlawful to use multiple hook or multiple bait trotlines in a commercial fishing operation unless each multiple hook or multiple bait trotline is marked by attaching to them at each end a floating buoy of any color except any shade of yellow or any shade of hot pink, or any combination of colors that include any shade of yellow or any shade of hot pink. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The gear owner's last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. If a vessel is used, the identification shall also include one of the following:

- (1) gear owner's current motor boat registration number; or
- (2) gear owner's U.S. vessel documentation name.

Authority G.S. 113-134; 113-173; 113-182; 143B-289.52.

SECTION .0400 - FISHING GEAR

15A NCAC 03J .0404 OCEAN ARTIFICIAL REEF GEAR RESTRICTIONS

(a) For the purpose of this Rule:

- (1) "hand line" shall mean fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.
- (2) "hook and line" shall mean one or more hooks attached to one or more lines and shall include rod and reel, a fishing rod designed to be hand-held with a manually or electrically operated reel attached.
- (3) "spearfishing gear" shall mean spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

(b) It shall be unlawful to use fishing gear in Ocean Artificial Reefs designated in 15A NCAC 03R .0119 except hand line, hook and line, and spearfishing gear, and except as further limited in accordance with Paragraph (d) of this Rule.

(c) It shall be unlawful to possess finfish taken with spearfishing gear in excess of a recreational limit within the boundaries of a designated Ocean Artificial Reef.

(d) The Fisheries Director may, by proclamation, close the areas designated in 15A NCAC 03R .0119 to the use of specific fishing gear, including the gears otherwise allowed in Paragraph (b) of this Rule, based on biological impacts or user conflicts.

(e) The Fisheries Director may, by proclamation, designate and modify Ocean Artificial Reefs in Coastal Fishing Waters of the Atlantic Ocean, based on biological impacts or variable spatial distribution, including shifted artificial reef material.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

SECTION .0500 – POUND NETS

15A NCAC 03J .0501 DEFINITIONS AND STANDARDS FOR POUND NETS AND POUND NET SETS

(a) ~~For the purpose of this Section the following terms are hereby defined:~~ The following definitions shall apply to this Section:

- (1) ~~Pound Net Set Permit. A Division authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.~~
- (2) ~~Permit period. One year from the date of issuance of a new or renewal pound net set permit.~~
- (3)(1) ~~Deployed pound net. Setting~~ "Deployed pound net" means setting of any part of a pound net, net except for a location identification stake or or, for a pound net used in the Atlantic Ocean, a location identification buoy placed at each end of a proposed new location.
- (2) "Flounder pound net" means a pound net set that produces a catch consisting of 50 percent

or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.

(4)(3) ~~Operational pound net set. A "Operational pound net set" means a pound net set as defined in 15A NCAC 03I .0101 and deployed according to rules and permit conditions with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish.~~

(4) "Permit period" means from the date of issuance of a new or renewal Pound Net Set Permit to the expiration date.

(5) "Pound Net Set Permit" means a Division of Marine Fisheries authorization to set and fish a pound net set in a commercial fishing operation in a specified location in a specified fishery.

(5) ~~Flounder pound net. A pound net set that produces a catch consisting of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs or a pound net set with all pounds (holding pen) constructed of four inch stretch mesh or greater.~~

(6) ~~Shrimp pound net. A "Shrimp pound net" means a pound net set with all pounds (holding pen) constructed of stretch mesh equal to or greater than one and one-fourth inches and less than or equal to two inches.~~

(b) ~~It is shall be~~ unlawful for a pound net used in a commercial fishing operation to:

(1) ~~Be be~~ deployed on a site without first obtaining a Pound Net Set Permit from the Fisheries Director.

(2) ~~Fail fail~~ to be operational for a minimum of 30 consecutive days during the ~~pound net set permit period unless~~ Pound Net Set Permit period, except the Fisheries Director may, by proclamation, waive this requirement if a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met, met or for compliance with the N.C. Southern Flounder Fishery Management Plan.

(c) ~~It is shall be~~ unlawful for a pound net set in a commercial fishing operation in coastal fishing waters to fail to:

(1) ~~Have have~~ the permittee's identification legibly printed on a sign no less than six inches square, securely attached to a stake at the permitted ends of each set at all times. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set shall be identified with a yellow buoy, which buoy that shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be legibly printed on the buoy. The identification on signs or buoys shall include the Pound Net

- Set Permit number and the permittee's last name and initials.
- (2) ~~Have~~ have yellow light reflective tape or yellow light reflective devices on each pound. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.
- (3) ~~Have~~ have a marked navigational opening at least 25 feet wide at the end of every third pound. The opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions.

If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(d) It ~~is~~ shall be unlawful to use a Recreational Commercial Gear License (RCGL) shrimp pound net as defined in 15A NCAC 030 .0302 ~~(a)(8)~~ .0302(a)(8) in coastal fishing waters unless the shrimp pound net is:

- (1) ~~Marked~~ marked by attaching to the offshore lead, ~~one~~ a floating buoy, any shade of hot pink in color, ~~which is~~ color. Buoys shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The ~~owner~~ gear owner's last name and initials shall be identified on the attached buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. ~~The If a vessel is used, the~~ identification shall also include owner's last name and initials and if a vessel is used, one of the following:
- (A) ~~Gear~~ gear owner's current motor boat registration number; or
- (B) ~~Owner's~~ gear owner's U.S. vessel documentation name.
- (2) ~~Set~~ set a minimum of 100 yards from a RCGL shrimp pound net set or 300 yards from an operational permitted shrimp pound net set.

(e) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any ~~or all~~ of the following requirements ~~or restrictions~~ on the use of escape panels:
- (A) ~~Specify~~ specify size, number, and ~~location~~ location;
- (B) ~~Specify~~ specify mesh length, but not more than six ~~inches~~ inches;
- (C) ~~Specify~~ specify time or ~~season~~ season; and
- (D) ~~Specify~~ specify areas.

- (2) It ~~is~~ shall be unlawful to use flounder pound net sets without four unobstructed escape panels in each pound. The escape panels shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels shall be a minimum mesh size of five and one-half inches, hung on the diamond, and shall be at least six meshes high and eight meshes long.

(f) ~~During 1 December through 1 February the~~ The Fisheries Director shall by proclamation establish time periods between December 1 through February 1 and areas where it ~~is~~ shall be unlawful to fail to remove all nets from pound net sets in commercial fishing operations in internal coastal waters.

(g) It ~~is~~ shall be unlawful within 30 days of abandonment of a permitted pound net set to fail to remove all stakes and associated gear from coastal fishing waters. The responsible party for abandoned pound net gear may be charged the costs incurred by the Division when the Division undertakes removal of the abandoned pound net gear.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0502 POUND NET SET PERMIT APPLICATION AND PROCESSING

(a) All initial, ~~renewal~~ renewal, or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the ~~rules~~ requirements governing all permits as provided in 15A NCAC 030 .0502. The procedures and requirements for obtaining permits are set forth in 15A NCAC 030 .0501.

(b) Applicants for Pound Net Set permits shall meet the following eligibility requirements as determined by the Fisheries Director:

- (1) ~~Applicant~~ the applicant is an individual and not a corporation, partnership, organization or other entity;
- (2) ~~Applicant~~ the applicant has in the past complied with fisheries rules and laws and does not have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall make an individual ineligible.
- (3) ~~Applicant~~ the applicant has in the past complied with all permit conditions, ~~rules~~ rules, and laws related to pound nets.
- (4) ~~Applicant~~ the applicant holds proper valid ~~license(s) and permit(s)~~ licenses and permits necessary to fish the type of net indicated in the application.

(c) Applications for Pound Net Set permits shall include the following:

- (1) ~~A~~ a base map provided by the Division of Marine Fisheries indicating the proposed set location including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location.

- (2) ~~Declaration~~ declaration of the type of pound net that will be deployed at the site. One of the following pound net fisheries shall be specified:
- (A) ~~Flounder~~ flounder pound net set;
 - (B) ~~Bait~~ bait pound net set;
 - (C) ~~Shrimp~~ shrimp pound net set;
 - (D) ~~Blue~~ blue crab pound net set; or
 - (E) ~~Other~~ other finfish pound net set.

(d) For proposed new ~~location(s)~~, locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comment for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application is shall be deemed denied. The applicant shall be notified of denial in writing. Approval is shall be conditional based upon the applicant's continuing compliance with eligibility requirements set out in Paragraph (e) of this Rule and specific conditions contained on the Pound Net Set Permit. The applicant may contest final decision to approve or deny the denial of a Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings, under G.S. 150B-23.

(e) In order for a site to be deemed suitable for a pound net set, the proposed set location shall meet the following criteria as determined by the Fisheries Director:

- (1) ~~The the~~ proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with ~~public~~ navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J .0101 and .0102;
- (2) ~~The the~~ proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (3) ~~The the~~ proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area. Flounder or other finfish pound net sets will be a minimum of 1,000 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets; except
 - (A) in Chowan River as referenced in 15A NCAC 03J .0203; and
 - (B) for renewal of pound net sets permitted prior to January 1, 2003;
- (4) ~~The the~~ proposed shrimp or blue crab pound net set will be a minimum of 300 yards, as measured in a perpendicular direction, from any point on a line following the permitted location of existing pound net sets;
- (5) ~~The the~~ proposed pound net set is not located in Core Sound in areas designated in 15A NCAC

03R .0113 except that only those Pound Net Set ~~Permits~~ permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule; and

- (6) ~~Issuance~~ issuance of the proposed Pound Net Set Permit is in compliance with management measures adopted in fishery management plans.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0503 POUND NET SET PERMIT RENEWAL

An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing ~~permit~~, permit and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set ~~Permit~~, Permit, as set forth in the rules of this Section. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0504 POUND NET SET PERMIT TRANSFER

It is shall be unlawful to transfer a Pound Net Set Permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. The application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a Pound Net Set Permit in the new permittee's name. The Fisheries Director may hold a public meeting and conduct such investigations necessary to determine if the permit should be transferred. The transferred permit expires on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification in accordance with Chapter 28A of the North Carolina General Statutes. The Administrator/Executor shall provide a copy of the deceased permittee's death certificate, a copy of letters of administration/letters ~~testamentary~~ testamentary, and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the ~~permit(s)~~ permit or permits to eligible immediate family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

15A NCAC 03J .0505 POUND NET SET PERMIT CONDITIONS

- (a) It is shall be unlawful for a ~~permittee~~, permittee to:
 - (1) ~~To~~ fail to notify the Division of Marine Fisheries ~~Marine Patrol~~ Communications

Center by phone at 800-682-2632 or 252-726-7021 within 72 hours by phone of:

- (A) ~~Of~~ an operational pound net set. Notification shall include the name of permittee, type of net, Pound Net Set Permit number, county where located, a specific location site, and how many pounds are in the set; and
- (B) ~~Of~~ a change to the type of net being set at the permitted site.
- (2) ~~To~~ make false notifications.
- (3) ~~To~~ fail to render the pound net set inoperable during any closed season for the type of fishery for which the pound net is permitted.

Failure to comply with this Paragraph is shall be grounds for the Fisheries Director to revoke any Pound Net Set Permits held by the permittee and for denial of any future applications for Pound Net Set Permits.

- (b) Pound net sets ~~are~~ shall be subject to inspection at all times.
- (c) Daily reporting may be a condition of the permit for a pound net set for fisheries under a quota.
- (d) It ~~is~~ shall be unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing Pound Net Set Permit has been revoked or denied.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS SCALLOPS, AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

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

- (a) It ~~is~~ shall be unlawful to possess, sell, or take oysters, ~~clams~~ clams, or mussels from areas ~~which that~~ have been designated as ~~prohibited (polluted) polluted~~ by proclamation by the Fisheries Director except as provided in ~~15A NCAC 03K Rules .0103, .0104, .0107, and .0401, .0401 of this Subchapter.~~ The Fisheries Director shall issue such shellfish polluted area proclamations ~~upon notice by the Division of Environmental Health that duly adopted if~~ criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area ~~upon notification from the Division of Environmental Health that duly adopted by proclamation if~~ criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 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., Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252- (252) 726-7021.
- (b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, ~~scallop~~ 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~~ shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North ~~Carolina.~~ Carolina, except as provided in 15A NCAC 03I .0104.

Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; ~~113-221; 113-221.1; 143B-289.52.~~

15A NCAC 03K .0102 RAKES PROHIBITED RAKES

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

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

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.~~

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(c) It is shall be~~ unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. 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. ~~(e)(d)~~ It ~~is shall be~~ unlawful to take shellfish from any Shellfish Management Area ~~which that~~ has been closed ~~and posted~~, in accordance with Paragraph (b) of this Rule, 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~~. impose any of the following requirements based on biological impacts or user conflicts:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;
- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

Authority G.S. 113-134; 113-182; 113-204; ~~113-221~~; 113.221.1; 143B-289.52.

15A NCAC 03K .0104 PERMITS FOR PLANTING RELAYING SHELLFISH FROM PROHIBITED/POLLUTED POLLUTED AREAS

(a) It ~~is shall be~~ unlawful to take ~~oysters or clams~~ shellfish from ~~prohibited (polluted) polluted~~ public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. ~~Lease~~ Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

(b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.

(c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.

~~(b)(d)~~ The season for relaying ~~clams~~ shellfish shall be ~~between April 1 and May 15 and the season for relaying oysters~~ shall be for may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:

- (1) the status of ~~oyster~~ shellfish resources available for harvest from public ~~bottom and bottom;~~
- (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
- (3) market factors affecting sale of oysters shellfish from public bottom which will assist in determining the statewide closure date bottom; and
- (4) ~~manpower available~~ availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.

~~(e) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall not apply.~~

~~(d)(e)~~ The Fisheries Director, ~~acting upon recommendations of the Division of Environmental Health,~~ shall close ~~and reopen~~ by proclamation any ~~private~~ shellfish ~~beds~~ lease or franchise for which the owner has obtained a permit to relay ~~oysters and clams~~ shellfish from ~~prohibited (polluted) polluted~~ public waters, waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.

Authority G.S. 113-134; 113-182; 113-203; ~~113-221~~; 113.221.1; 143B-289.52.

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

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

- (1) during open ~~seasons,~~ seasons; and
- (2) for recreational purposes.

(b) It ~~is shall be~~ 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 day;
- (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per ~~day,~~ 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 shall be~~ unlawful to take oysters or clams between the hours of sunset and sunrise on any day.

(b) It ~~is shall be~~ unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on ~~Sunday~~ Sundays or between sunset and sunrise on any day except that in New Hanover, ~~Pender~~ Pender, and Brunswick ~~Counties,~~ counties, oysters and clams may be unloaded until two hours after sunset.

(c) Oysters and clams taken on ~~Sunday~~ Sundays from public bottom under the provisions of ~~15A NCAC 03K Rule .0105 of this Section~~ or from shellfish leases and franchises pursuant to G.S. 113-208 ~~are shall be~~ exempt from Paragraph (b) of this Rule.

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

15A NCAC 03K .0107 DEPURATION OF SHELLFISH CLAMS AND OYSTERS

(a) It ~~is shall be~~ unlawful to take clams or oysters from ~~the polluted~~ public ~~or private prohibited (polluted)~~ waters or franchises of the ~~state~~ State for the purpose of depuration except when the harvest will utilize ~~shellfish~~ clams or oysters 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 supervision of the Division

of Marine Fisheries or the Division of Environmental Health Fisheries. 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~~ specify species;
- (2) ~~Specify areas~~ specify areas, except harvest will ~~shall~~ not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) ~~Specify~~ specify harvest days;
- (4) ~~Specify time period;~~ specify time;
- (5) ~~Specify~~ specify quantity or size;
- (6) specify quantity;
- (6)(7) ~~Specify~~ specify harvest methods; and
- (7)(8) ~~Specify~~ specify record keeping requirements.

(c) Depuration permits:

- (1) ~~It is it shall be~~ unlawful for individuals to harvest clams or oysters from ~~prohibited (polluted)~~ 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~~ clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits ~~must~~ shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
- (2) ~~It is~~ in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, ~~location~~ location, and telephone number of the depuration operation where the shellfish will be depurated.
- (3) ~~Clam or Oyster Dealers~~ clam or oyster dealers desiring to obtain ~~prohibited (polluted)~~ polluted clams or oysters from polluted waters for the purpose of 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~~ clams or oysters harvested from ~~prohibited (polluted)~~ polluted waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.
- (2) ~~Clams~~ clams or oysters harvested from ~~prohibited (polluted)~~ 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 supervision of the ~~Division of Marine Fisheries or the Division of Environmental Health~~ Division.

(e) It ~~shall be~~ 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; 113-221.1; 143B-289.52.

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

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

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

- (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*); alterniflora) that may exist together or separately;
- (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~~ Shellfish on Shellfish Leases and Franchises;
- (3) in areas designated in ~~15A NCAC 03K Rule .0204 of this Subchapter and 15A NCAC 03R .0103;~~ 15A NCAC 03R .0103; and
- (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and ~~03K Rules .0201, .0302, .0404, .0501, and .0503;~~ .0503 of this Subchapter.

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

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

~~It is~~ Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, ~~clams~~ clams, or mussels. Tags shall be affixed by the harvester ~~or dealer~~ and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90

days. It shall be unlawful for the tag to fail to ~~and shall~~ meet the following criteria:

- (1) ~~Tags~~ harvest tags shall be identified as harvest tags. They shall be durable for at least 90 days, ~~water resistant, waterproof,~~ and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) ~~Tags~~ harvest tags shall be securely fastened to ~~the outside of~~ each container in which shellstock is transported. A ~~harvester or dealer~~ harvest tag shall ~~be remain~~ securely fastened to ~~the outside of~~ each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. 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 harvest and dealer 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.~~ bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) ~~Tags~~ tags shall contain legible information arranged in the specific order as follows:
 - (a) ~~The the~~ harvester's name, address address, and shellfish license or standard or retired standard commercial fishing license Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement number number;
 - (b) ~~The the~~ date of harvest. harvest;
 - (c) ~~The the~~ most precise description identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts. Bay), including at a minimum the State's two initials

"N.C." and the growing area designation;

- (d) the shellfish lease or franchise number, if applicable;
- ~~(d)(e)~~ Type type and quantity of shellfish shellfish;
- ~~(e)(f)~~ The the following statement in bold, capitalized type: font: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS". DAYS."; and
- ~~(f)(g)~~ the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

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

15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

- (a) ~~Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0501.~~
- (b) ~~It is unlawful to harvest shellfish by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises.~~

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

SECTION .0200 – OYSTERS

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

- (a) ~~It is~~ shall be unlawful to take or possess oysters from public bottom except from October 15 through March 31.
- (b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of oysters:
 - (1) specify time;
 - (2) specify area;
 - (3) specify means and methods;
 - (4) specify season within the period set forth in Paragraph (a) of this Rule;
 - (5) specify size, but the minimum size limit specified shall not be less than three inches, except the minimum size limit specified shall not be less than two and one-half inches to prevent loss of oysters due to predators, pests, or infectious oyster diseases; and
 - (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard

U.S. bushels in a commercial fishing operation per day.

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52.

15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS

(a) It is ~~shall be~~ unlawful to possess oysters ~~which that~~ have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by proclamation issued under the authority of Rule .0201 of this Section, or any combination thereof that exceeds a five-percent tolerance limit by volume. Oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken. In determining whether the tolerance limit ~~is has been~~ exceeded, ~~the Fisheries Director or his agents may~~ Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being ~~graded and, graded, and~~ in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by ~~law. law~~ the entire quantity being graded or any portion thereof.

~~(b) All oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken.~~

~~(c)(b)~~ This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants permitted by the Division of Marine Fisheries.

Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52.

15A NCAC 03K .0204 DREDGES / MECHANICAL MECHANICAL METHODS FOR OYSTERING PROHIBITED

It is ~~shall be~~ unlawful to use any ~~dredge or other mechanical method~~ mechanical methods for oystering as defined in 15A NCAC 03I .0101 to take oysters:

- (1) in the Mechanical Methods Prohibited areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises by ~~permit~~; a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; and
- (2) on any posted ~~bottoms~~ bottom upon which oysters or shells have been planted by the state, unless such ~~bottoms have~~ bottom has been opened to the public and ~~dredging permitted~~ mechanical methods for oystering are allowed.

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

15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM A PRIVATE SHELLFISH BOTTOMS LEASE OR FRANCHISE

(a) It is ~~shall be~~ unlawful to take, possess, buy, or sell oysters from a shellfish ~~leases~~ lease or ~~franchises~~ franchise during the

open season unless such oysters have been culled in accordance with Rule 15A NCAC 03K .0202- .0202 of this Section.

~~(b) It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division, that the oysters were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

~~(c) It is shall be~~ unlawful for a shellfish lease or franchise ~~holders holder or their the holder's~~ designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a ~~shellfish leases~~ lease or ~~franchises~~ franchise.

(d) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

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

15A NCAC 03K .0207 OYSTER SIZE AND HARVEST LIMIT EXEMPTION EXEMPTIONS

Possession and sale of oysters by a hatchery or ~~oyster~~ aquaculture operation and purchase and possession of oysters from a hatchery or ~~oyster~~ aquaculture operation shall be exempt from bag and size limit restrictions ~~set under authority of 15A NCAC 03K .0201 and 03K .0202.~~ as set forth in Rules .0201 and .0202 of this Section. It is ~~shall be~~ unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture ~~Operations Permit.~~ Operation Permit as set forth in 15A NCAC 03O .0503.

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

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

(a) For the purpose of this Rule and 15A NCAC 03R .0116, "Seed Oyster Management Area" shall mean a shellfish producing habitat area located in open harvest waters that has environmental conditions unsuitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to allow the transfer of oysters to shellfish leases or franchises that have more suitable environmental conditions for further grow-out.

(b) The Fisheries Director may, by proclamation, modify or close Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for the protection of public health related to the public health programs under the authority of the Marine Fisheries Commission.

~~(a)(c)~~ It is ~~shall be~~ 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)(d)~~ It is shall be 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.~~

(a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.

(b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.

(c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.

~~(b)(d) It is shall be~~ unlawful to use mechanical methods ~~for oystering or clamming in, or to take oysters or clams from shellfish from,~~ Oyster Sanctuaries designated in 15A NCAC 03R ~~.0117.~~ .0117 or in accordance with Paragraph (c) of this Rule.

(e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

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

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS

(a) It is shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It is shall be unlawful to take, possess, sell, or purchase any clams (except Rangia or freshwater clams) less than one inch thick except in accordance with ~~15A NCAC 3K .0305(b).~~ Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which it was taken. ~~Agents of the Fisheries Director are In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of~~

portions of the entire quantity of ~~clams being graded~~ graded, and in cases of violations, may seize and return to public bottom or ~~other disposition~~ otherwise dispose of the clams as authorized by law ~~of the entire quantity being graded or any portion thereof.~~

(b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in ~~15A NCAC 3K .0302~~ Rule .0302 of this Section may or may not apply; apply for:

- (1) ~~For harvest limits for temporary openings made upon the recommendation of Division of Environmental Health, consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan;~~
- (2) ~~For maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery Management Plan; or~~
- (3) ~~For relaying of polluted clams from polluted waters to private shellfish bottoms~~ bottom as permitted by ~~15A NCAC 3K .0104.~~ Rule .0104 of this Subchapter.

Authority G.S. 113-134; 113-136; 113-137; 113-182; ~~113-221;~~ 143B-289.52.

15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM

(a) It is shall be unlawful to take, buy, sell, or possess any clams taken by ~~mechanical methods~~ mechanical methods for clamming as defined in 15A NCAC 03I ~~.0101, "mechanical methods for clamming," .0101~~ from public bottom unless the season is open.

(b) The Fisheries Director may, by proclamation, open and close the season for the taking of clams by mechanical methods from public bottom at any time in the Atlantic Ocean and only from December 1 through March 31 in Internal ~~Coastal~~ Waters.

(c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that were opened at any time from January 1979 through September 1988 in:

- (1) Newport, North, White Oak, and New rivers;
- (2) Core and Bogue sounds;
- (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
- (4) the Atlantic Ocean.

Other areas opened for purposes as set out in ~~15A NCAC 03K Rule .0301(b)~~ of this Section shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(d) The Fisheries Director may, by proclamation, impose any of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:

- (1) specify time;
- (2) specify means and methods;
- (3) specify size; and
- (4) specify quantity.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS

(a) It is ~~shall be~~ unlawful to take clams by ~~any method, other than by hand tongs, hand rakes, or by hand,~~ mechanical methods for clamming as defined in 15A NCAC 03I .0101, except as provided in ~~15A NCAC 03K Rule .0302 and .0303, of this Section.~~ Regardless of the areas ~~which that~~ may be opened, it is ~~shall be~~ unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as ~~described defined~~ in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*, *alterniflora*) that may exist together or separately.

(b) It is ~~shall be~~ unlawful to possess clam trawls or cages aboard a vessel at any time, or have ~~kick/deflector~~ kick or deflector plates ~~normally otherwise~~ 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).~~ Rule .0302(a) of this Section. A period of 14 days before and after the season as specified by proclamation ~~will shall~~ be allowed for the installation and removal of ~~kick/deflector~~ kick or deflector plates and clam trawls or cages. Vessels with permits for activities provided for in ~~15A NCAC 03K Rules .0104, .0107, .0303(a), and .0401 of this Subchapter~~ 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.

15A NCAC 03K .0305 CLAM SIZE AND HARVEST LIMIT EXEMPTION EXEMPTIONS

Possession and sale of clams by a hatchery or ~~clam~~ aquaculture operation and purchase and possession of clams from a hatchery or ~~clam~~ aquaculture operation shall be exempt from bag and size limit restrictions in ~~15A NCAC 3K .0304(a).~~ as set forth in Rule .0301 of this Section. It is ~~shall be~~ unlawful to possess, sell, purchase, or transport such clams unless they are in compliance with all conditions of the Aquaculture Operation ~~Permit.~~ Permit as set forth in 15A NCAC 03O .0503.

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

SECTION .0400 - RANGIA CLAMS

15A NCAC 03K .0401 PROHIBITED (POLLUTED) POLLUTED AREA PERMIT REQUIREMENT REQUIREMENTS

It is ~~shall be~~ unlawful to take Rangia clams or their shells by any method from ~~prohibited (polluted)~~ polluted waters without first ~~securing obtaining~~ a Permit to Harvest Rangia Clams from ~~Prohibited (Polluted) Polluted~~ Areas from the Fisheries Director. The permit application shall include a list of all designees operating under the permit. ~~Such~~ The permit shall designate the area, means and methods, and ~~time(s)~~ times in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for disposing of Rangia clam meats. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

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

SECTION .0500 - SCALLOPS

15A NCAC 03K .0505 SEA SCALLOPS SIZE LIMIT AND TOLERANCE

It is ~~shall be~~ unlawful to land or possess sea scallops with a shell height (length) of less than three and one-half inches. A tolerance of not more than ~~ten~~ 10 percent by number for undersized sea scallop shell height shall be allowed. In determining whether the ~~proportion of undersized sea scallops exceeds the ten percent tolerance limit,~~ the Fisheries Director and his agents are limit has been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may ~~require seizure or other disposition~~ seize and return to public bottom or otherwise dispose of the sea scallops as authorized by law. law the entire quantity being graded or any portion thereof.

Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52.

15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASES LEASE OR FRANCHISES FRANCHISE

(a) ~~It shall be unlawful to sell, purchase, or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division of Marine Fisheries, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.~~

(a) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(b) It shall be unlawful for a shellfish lease or franchise holders holder or their the holder's designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a shellfish leases lease or franchises franchise.

(c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

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

SUBCHAPTER 03L – SHRIMPS, SHRIMP, CRAB, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0101 SHRIMP HARVEST RESTRICTIONS

(a) It is ~~shall be~~ unlawful to take shrimp until the Fisheries Director, by proclamation, opens the season.

(b) The Fisheries Director may, by proclamation, impose any ~~or~~ **all** of the following restrictions on the taking of shrimp:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

It ~~is~~ **shall be** unlawful to take shrimp by any method from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:

- (1) in the Atlantic Ocean;
- (2) with the use of fixed ~~and~~ **nets**, channel nets, hand seines, shrimp pots, or cast nets; or
- (3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

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

15A NCAC 03L .0103 PROHIBITED NETS, MESH LENGTHS LENGTHS, AND AREAS

(a) It ~~is~~ **shall be** unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) ~~Trawl net—~~ **trawl nets**: one and one-half inches;
- (2) ~~Fixed fixed~~ **nets**, channel nets, float nets, butterfly nets, and hand ~~seines—~~ **seines**: one and one-fourth inches; and
- (3) ~~Cast net—~~ **cast nets**: no restriction.

(b) It ~~is~~ **shall be** unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh length. Net material used as chafing gear shall be no less than four inches mesh length, except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It ~~is~~ **shall be** unlawful to take shrimp with trawls that have a combined headrope of greater than 90 feet in Internal ~~Coastal~~ Waters in the following areas:

- (1) ~~North north~~ of the 35° 46.3000' N latitude line;
- (2) Core Sound south of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line;
- (3) Pamlico River upstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- (4) Neuse River southwest of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) ~~Effective January 1, 2017 it is~~ **It shall be** unlawful to take shrimp with trawls that have a combined headrope of greater than 220 feet in Internal ~~Coastal~~ Waters in the following areas:

- (1) Pamlico Sound south of the 35° 46.3000' N latitude line and north of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks;
- (2) Pamlico River downstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- (3) Neuse River northeast of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(e) It ~~is~~ **shall be** unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

(f) It ~~is~~ **shall be** unlawful to use channel nets except as provided in 15A NCAC 03J .0106.

(g) It ~~is~~ **shall be** unlawful to use shrimp pots except as provided in 15A NCAC 03J .0301.

(h) It ~~is~~ **shall be** unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. These federal rules are incorporated by reference including subsequent amendments and editions. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> <https://www.ecfr.gov/cgi-bin/ECFR> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557 at no cost.

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

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It ~~is~~ **shall be** unlawful to:

- (1) ~~Possess possess~~ from areas open to the harvest of shrimp more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303(e) and (f).
- (2) ~~Take take~~ or possess more than four quarts, heads on or two and one-half quarts, heads off, of shrimp per person per day with a cast net from areas closed to the taking of shrimp.

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

SECTION .0200 – CRABS

15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS

(a) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(1) from January 1 through January 31, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(b) It shall be unlawful to possess blue crabs taken from Crab Harvest Management Areas designated in 15A NCAC 03R .0118(2) from March 1 through March 15, except dealers shall have seven days after the beginning of the closure to sell, offer for sale, or transport blue crabs that were taken from this area prior to the closure.

(a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.

(b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:

- (1) soft crabs;
- (2) pink and red-line peeler crabs;
- (3) white-line peeler crabs; and
- (4) from March 1 through October 31, male crabs to be used as peeler crab bait.

~~The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.~~

(c) It shall be unlawful to possess more than five percent by number of the following hard blue crabs in any combination in any container:

- (1) male hard blue crabs less than five inches from tip of spike to tip of spike;
- (2) immature female hard blue crabs;
- (3) mature female hard blue crabs less than five inches from tip of spike to tip of spike; and
- (4) mature female hard blue crabs with a dark (brown or black) sponge from April 1 through April 30 statewide. For the purpose of this Rule, a "mature female hard blue crab with a dark sponge" shall mean a mature female hard crab that has extruded her eggs on the abdomen or abdominal flap and the eggs have developed a coloration ranging from any shade of brown through black.

(d) It shall be unlawful to possess blue crabs described in Subparagraphs (c)(1) through (c)(3) of this Rule unless individual crabs are sorted and placed into separate containers for each of the following categories:

- (1) soft crabs;
- (2) pink and red-line peeler crabs;
- (3) white line peeler crabs; and

- (4) from March 1 through October 31, male crabs to be used as peeler crab bait.

All blue crabs not sorted into containers as specified shall be deemed hard blue crabs for the purpose of establishing the five percent tolerance described in Paragraph (c) of this Rule.

~~(e)(e) It is shall be unlawful to possess more than five percent by number of white-line peelers peeler crabs in a container of pink and red-line peeler crabs, peelers, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.~~

~~(d)(f) It is shall be unlawful to:~~

- (1) sell white-line peelers; peeler crabs;
- (2) possess white-line peelers peeler crabs unless they are to be used in the harvester's permitted blue crab shedding operation; and or
- (3) possess male white-line peelers peeler crabs from June 1 through September 1.

~~The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.~~

~~(e)(g) It is shall be 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. purposes, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.~~

~~(f)(h) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and take the following actions for may further restrict commercial and recreational blue crab harvest: harvest by imposing any of the following requirements on the taking of blue crabs:~~

- (1) specify areas;
- (2) specify seasons;
- (3) specify time periods;
- (4) specify means and methods;
- (5) specify culling tolerance; and
- (6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

(i) It shall be unlawful to fail to immediately return hard blue crabs not meeting the requirements of this Rule to the waters from which they were taken.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03L .0202 CRAB TRAWLING

(a) It is shall be unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It is shall be unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl is shall be three inches, except:

- (1) The the minimum mesh length is shall be four inches in the area of western Pamlico Sound west of a line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "1" at the southern end

of Roanoke Island; running southerly to a point 35° 30.7500' N - 75° 40.5667' W near the "S" Beacon at Long Shoal; running southwesterly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04 .6167' N - 76° 27.8000' W on Point of Marsh; and

- (2) ~~The~~ the Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It ~~is~~ shall be unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03L .0203 CRAB DREDGING

~~(a) It is~~ shall be unlawful to take crabs with dredges ~~except~~ except

- (1) ~~from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109; and~~
- (2) ~~incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph (a)(1) of this Rule provided the weight of the crabs shall not exceed; exceed the lesser of:~~
- ~~(A)(1) 50 10 percent of the total weight of the combined oyster and crab catch; or~~
- ~~(B)(2) 500 pounds, whichever is less. 100 pounds.~~

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

~~(b) It is unlawful to take crabs with dredges between sunset and sunrise and between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.~~

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03L .0204 CRAB POTS

(a) It ~~is~~ shall be unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

- (1) specify areas;
- (2) specify time periods; and

- (3) specify means and methods.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

15A NCAC 03L .0205 CRAB SPAWNING SANCTUARIES

(a) It ~~is~~ shall be unlawful to set or use trawls, pots, ~~and or~~ mechanical methods for ~~oysters or clams shellfish~~ or take crabs with the use of commercial fishing equipment ~~from the crab spawning sanctuaries described in 15A NCAC 03R .0110 from March 1 through August 31.~~ in crab spawning sanctuaries:

- (1) from March 1 through August 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(1); and
- (2) from March 1 through October 31 for the crab spawning sanctuaries described in 15A NCAC 03R .0110(2).

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

- (1) specify areas;
- (2) specify time periods;
- (3) specify means and methods; and
- (4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03M - FINFISH

SECTION .0200 - STRIPED BASS

15A NCAC 03M .0201 STRIPED BASS REQUIREMENTS; GENERAL

(a) ~~Striped bass is defined as striped bass~~ For the purpose of this Section, "striped bass" shall mean striped bass (Morone saxatilis) and its hybrids taken in coastal and joint fishing waters. Coastal and Joint Fishing Waters.

(b) It ~~is~~ shall be unlawful to possess striped bass ~~imported from other states that are~~ less than 18 inches long (total length); length imported from other states.

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

- (1) open striped bass season established for ~~internal coastal waters; Internal Waters;~~
- (2) open striped bass season established for the Atlantic Ocean; or
- (3) open striped bass season of another state without possession of the following:
 - (A) ~~A~~ a bill of lading as described in 15A NCAC 03I .0114; and
 - (B) ~~A~~ a numbered, state-issued tag from the ~~State~~ state of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.

(d) The 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 .0202 STRIPED BASS SEASON, SIZE, AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) It ~~is shall be~~ unlawful to possess striped bass from the ~~coastal fishing waters~~ Coastal Fishing Waters of the Cape Fear River and its tributaries.

(b) It ~~is shall be~~ unlawful to possess striped bass from the Roanoke River Management ~~Area~~ Area, as ~~designated in 15A NCAC 03R .0201~~, in a commercial fishing operation.

(c) The Fisheries Director may, by ~~proclamation~~ proclamation, impose any ~~or all of~~ the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in ~~internal coastal waters~~ Internal Waters during the period from October 1 through April 30:

- (1) ~~Specify~~ specify fishing days and times;
- (2) ~~Specify areas;~~ specify area;
- (3) ~~specify means and methods;~~
- (4) ~~specify size, but the minimum size specified shall not be less than 18 inches total length; and~~
- (3)(5) ~~Specify~~ specify quantity, except possession for recreational purposes shall not exceed:
 - (A) more than three fish in any one day in the Albemarle Sound Management ~~Area~~ Area, as designated in ~~Rule 15A NCAC 03R .0201~~; and
 - (B) more than two fish in any one day in the ~~joint and coastal fishing waters~~ Joint and Coastal Fishing Waters of the Central Southern Management ~~Area~~ Area, as designated in ~~Rule 15A NCAC 03R .0201; .0201~~.
- (4) ~~Specify means and methods; and~~
- (5) ~~Specify size, but the minimum size specified shall not be less than 18 inches total length.~~

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

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

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

Authority G.S. 113-134; 113-182; ~~113-221~~; 113-221.1; 143B-289.52.

15A NCAC 03M .0205 STRIPED BASS; PROHIBITED TRAWLING

(a) It ~~is shall be~~ unlawful to possess striped bass on a vessel with a trawl net on that vessel in ~~internal coastal waters~~ Internal Waters except during transit from ocean fishing grounds to port during any open striped bass trawl season in the Atlantic Ocean established by proclamation. Striped bass so possessed ~~must~~ shall meet the minimum size limit set by proclamation.

(b) It ~~is shall be~~ unlawful to possess striped bass on a vessel in the Atlantic Ocean with a trawl net on that vessel except during any open striped bass trawl season in the Atlantic Ocean established by proclamation.

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0503 FLOUNDER

(a) It ~~is shall be~~ unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.

(b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° 33.000'N) to Cape Lookout (34° 36.000'N) unless each trawl has a mesh length of ~~5-1/2~~ five and one-half inches or larger diamond mesh (stretched) or ~~6~~ six inches or larger square mesh (stretched) applied throughout the body, ~~extension(s)~~ extensions, and the cod end (tailbag) of the net except as provided in Paragraphs (g) and (h) of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

- (1) ~~It is it shall be~~ unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the ~~vessel~~ vessel, or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (2) ~~It is it shall be~~ unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
- (3) ~~It is it shall be~~ unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
- (4) ~~It is it shall be~~ unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean.

Ocean, except as specified in Subparagraph ~~(e)(1) of this Rule.~~ (1) of this Paragraph.

(d) All fish dealer transactions in flounder landed from the Atlantic Ocean ~~must~~ shall be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related ~~rules~~ requirements in 15A NCAC 03O .0500.

(e) It ~~is~~ shall be unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33.000' N) to Cape Lookout (34° 36.0000'N).

(g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

(h) Flynets are exempt from the flounder trawl mesh requirements if they meet the following ~~definition:~~ requirements:

- (1) ~~The the~~ net has large mesh in the wings that measure ~~8~~ eight inches to 64 inches;
- (2) ~~The the~~ first body section (belly) of the net has 35 or more meshes that are at least ~~8~~ eight inches; and
- (3) ~~The the~~ mesh decreases in size throughout the body of the net to as small as ~~2~~ two inches or smaller towards the terminus of the net.

(i) Commercial ~~Season:~~ Season:

- (1) ~~The the~~ North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 80 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (2) ~~The the~~ season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

(3) ~~During~~ during any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(j) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

(k) 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 flounder fishery:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- ~~(4)(5)~~ Specify specify size;
- ~~(2)~~ Specify season;
- ~~(3)~~ Specify area;
- ~~(4)(6)~~ Specify specify quantity; and
- ~~(5)~~ Specify means/methods; and
- ~~(6)(7)~~ Require require submission of statistical and biological data.

(l) Possession and sale of flounder by a hatchery or flounder aquaculture operation and purchase and possession of flounder from a hatchery or flounder aquaculture operation shall be exempt from season and size limit restrictions set under Paragraph (k) of this Rule. It ~~is~~ shall be unlawful to possess, sell, purchase, or transport such flounder unless they are in compliance with all conditions of the Aquaculture ~~Operations~~ Operation Permit.

Authority G.S. 113-134; 113-169.5; 113-182; ~~443-221;~~ 113-221.1; 143B-289.52.

SUBCHAPTER 03N - FISH HABITAT AREAS

15A NCAC 03N .0104 PROHIBITED GEAR, PRIMARY NURSERY AREAS

It ~~is~~ shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, ~~or mechanical method for clams or oysters~~ mechanical methods for clamming, or mechanical methods for oystering for the purpose of taking any marine fishes in any of the primary nursery areas described in 15A NCAC ~~3R~~ 03R .0103.

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

15A NCAC 03N .0105 PROHIBITED GEAR, SECONDARY NURSERY AREAS

(a) It ~~is~~ shall be unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 03R .0104.

(b) It ~~is~~ shall be unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 03R .0105, except that the Fisheries Director, may, by proclamation, open any ~~or all~~ of the special secondary nursery areas, or any portion thereof, ~~listed~~ designated in 15A NCAC 03R .0105 to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 03L .0100 and .0200.

Authority G.S. 113-134; 113-182; ~~113-221~~; 113-221.1;
143B-289.52.

**SUBCHAPTER 030 - LICENSES, LEASES, ~~FRANCHISES~~
FRANCHISES, AND PERMITS**

SECTION .0100 - LICENSES

**15A NCAC 030 .0101 PROCEDURES AND
REQUIREMENTS TO OBTAIN LICENSES,
~~ENDORSEMENTS~~ ENDORSEMENTS, AND
COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

(b) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

~~(a)(c)~~ To obtain any Division of Marine Fisheries licenses, endorsements, ~~commercial fishing vessel registrations, and~~ Commercial Fishing Vessel Registrations, a licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted. The following shall be required for the application: ~~except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party, or person holding a power of attorney:~~

- (1) Full full name, physical address, mailing address, date of birth, and signature of the licensee on the application. licensee. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized; notarized.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- ~~(2)(3)~~ Current current and valid picture identification of licensee or responsible party. the licensee. Acceptable forms of picture identification are state driver's license, state identification eard, card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof; thereof.
- ~~(3)(4)~~ Certification certification that the applicant does not have four or more marine or estuarine resource violations convictions during the previous three years; years.

- ~~(4)~~ Valid documentation papers or current motor boat registration, or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current current articles of incorporation and a current list of corporate officers when purchasing a license or ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the vessel master of that vessel shall also be specified. The responsible party licensee shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel; changing the vessel master.
- (6) a current copy of a written partnership agreement shall be provided when purchasing a license, endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is established.
- (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- ~~(6)(8)~~ An affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessel(s) vessels used in the operation in accordance with G.S. 113-168.6 when purchasing a ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration with a for-hire endorsement.
- (7) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement, or commercial fishing vessel registration in a partnership name;
- (8) For nonresidents, certification of the state of residency;
- (9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (11) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated

~~license, the applicant shall provide valid certification as a North Carolina certified shellfish dealer;~~

- (13) ~~In addition, for the Blanket For Hire Captain's Coastal Recreational Fishing License (CRFL), the applicant shall provide a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and~~

- (14) ~~In addition, for the Blanket For Hire Vessel CRFL or the Non Blanket For Hire Vessel License, valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

(d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be documented by the licensee with certification of the state of residency. Proof of residency for residents of North Carolina shall be documented by the licensee as follows:

- (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4) and:

- (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;
 (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
 (C) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty assignment at a military facility in North Carolina.

- (2) All other types of licenses:

- (A) North Carolina voter registration card;
 (B) current North Carolina Driver's License;
 (C) current North Carolina Certificate of Domicile;
 (D) current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 (E) military identification or military dependent identification, and permanent change of station orders or assignment orders substantiating the military individual's active duty

assignment at a military facility in North Carolina.

(e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:

- (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers.

- (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:

- (A) valid documentation papers or current motor boat registration, or copies thereof for the vessel engaged as for-hire; or
 (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

- (3) Fish Dealer License:

- (A) the physical address of the established location where business is conducted and, if different, the address where records are kept; and
 (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer License with clam or oyster categories or a consolidated license.

- (4) Land or Sell License:

- (A) valid documentation papers or current motor boat registration, or copy thereof; or
 (B) a copy of the pending application and a notarized bill of sale if an application for transfer of documentation is pending.

The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

- (5) Ocean Fishing Pier License:

- (A) the information required in G.S. 113-169.4; and
 (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the linear length of the pier before the license can be issued.

- (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.

- (7) Spotter Plane License:

- (A) the information required in G.S. 113-171.1;
 (B) the current aircraft registration; and
 (C) a list of operators.

~~(b)(f)~~ For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

- (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through June 30 of the following year.
- ~~(+)(2)~~ To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
 - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
 - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
 - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
- ~~(2)(3)~~ It is lawful it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean equal to than the number of vessels that he owns the person owns that individually met the eligibility requirements of Parts ~~(b)(1)(A)~~(f)(2)(A) and ~~(b)(1)(B)~~(f)(2)(B) of this Rule.
- ~~(3)(4)~~ The the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
- ~~(4)(5)~~ At at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the vessel master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.
- ~~(5)(6)~~ The the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City Office of the Division of Marine Fisheries within five days of change as to the vessel master identified on the license.
- ~~(6)(7)~~ Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30, year.

(g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be applicable:

- (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.
- (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

- (3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the Division within 30 days after the last day of the tournament.

(h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(e) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:

- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.
- (2) Current picture identification of tournament organizer. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;
- (2) Current picture identification of responsible party or master. Acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card), or passport; or if applying by mail, a copy thereof;
- (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered, in accordance with G.S. 113-169.5.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the

applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and

- (A) ~~a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident;~~
 - (B) ~~a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or~~
 - (C) ~~military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.~~
- (2) All other types of licenses:
- (A) ~~North Carolina voter registration card; or~~
 - (B) ~~Current North Carolina Driver's License; or~~
 - (C) ~~Current North Carolina Certificate of Domicile; or~~
 - (D) ~~Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or~~
 - (E) ~~Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.~~

~~(f) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.~~

~~(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.~~

~~(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.~~

~~(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party, or person holding a power of attorney;~~

- (1) ~~The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement, or commercial fishing vessel registration.~~
- (2) ~~Certification that articles of incorporation and list of corporate officers, if incorporated,~~

~~written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.~~

- (3) ~~Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.~~
- (4) ~~The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.~~
- (5) ~~The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, or commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.~~
- (6) ~~If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.~~
- (7) ~~Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.~~

Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0102 RECREATIONAL FISHING TOURNAMENT LICENSE TO SELL FISH PROCEDURES AND REQUIREMENTS TO RENEW LICENSES, ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS

~~(a) It is unlawful for anyone other than the holder of the Recreational Fishing Tournament License to Sell Fish to sell fish taken during a recreational fishing tournament.~~

~~(b) Fish to be sold under the Recreational Fishing Tournament License to Sell Fish must be sold only to licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission (MFC) or provisions of proclamations issued by the Fisheries Director as authorized by the MFC.~~

~~(c) It is unlawful for a licensed recreational fishing tournament organizer to fail to accurately and legibly complete and file within 30 days after the last day of the tournament a North Carolina Recreational Fishing Tournament Disposition of Proceeds from the Sale of Fish Form provided by the Division.~~

(a) For the purpose of this Rule, the procedures and requirements for the licensee shall also apply to the responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

(b) To renew Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, except Recreational Commercial Gear Licenses, a renewal application shall be submitted by the licensee. Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the licensee with deficiency in the application so noted. The following is required for the renewal application:

- (1) full name, physical address, mailing address, date of birth, and signature of the licensee.
- (2) a statement from the licensee that the information and supporting documentation submitted with the application is true and correct.
- (3) current and valid picture identification of the licensee. Acceptable forms of picture identification are state driver's license, state identification card issued by the Division of Motor Vehicles, military identification card, resident alien card (green card), or passport; or if purchased by mail, a copy thereof.
- (4) the information required in Rule .0101(c)(4) through (c)(8) of this Section, if changed since last issuance of the license, endorsement, or Commercial Fishing Vessel Registration.
- (5) the information required in Rule .0101(e)(1) of this Section, if the linear length of the Ocean Fishing Pier has changed.
- (6) a valid Permit and Certificate of Compliance from the Division's Shellfish Sanitation and Recreational Water Quality Section, if renewing a Fish Dealer License with clam or oyster categories or a consolidated license.
- (7) certification that all information on the application is true and accurate. Notarization of the signature on renewal applications shall not be required.

The Division may require current copies of documentation for licenses, endorsements, and Commercial Fishing Vessel Registrations upon renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.

Authority G.S. 113-134; 113-168; ~~113-168.4~~; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0103 AUXILIARY VESSELS

(a) Buy boats, run boats, purse boats or any other vessels used in conjunction with commercial fishing operations, except vessels without motors used in connection with other vessels with commercial fishing vessel registrations, shall have a commercial fishing vessel registration. It shall be unlawful to fail to comply with Commercial Fishing Vessel Registration requirements set forth in G.S. 113-168.6 to operate a buy vessel, run vessel, purse

vessel, or any other vessel used in conjunction with a commercial fishing operation, except as specified.

(b) ~~A person~~ An individual in command of a vessel that is auxiliary to a vessel with a ~~commercial fishing vessel registration~~ Commercial Fishing Vessel Registration with a ~~person~~ an individual aboard who holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License engaged in a commercial fishing operation using a pound net, ~~long haul~~, long haul, or beach seine or ~~purse seine~~ is exempt from the provisions of G.S. 113-168.2 (a1).

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-168.6; ~~113-169~~; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0104 COMMERCIAL UNLOADING OF FISH

It is ~~shall be~~ unlawful to unload fish from a vessel in North Carolina ~~which~~ that has been engaged in a commercial fishing operation outside ~~state~~ State waters without possessing a valid:

- (1) Standard or Retired Standard Commercial Fishing Licenses; or License with applicable endorsement;
- (2) Menhaden License for Nonresidents Without a Standard Commercial Fishing License; or
- (3)(2) Shellfish License for North Carolina Residents without a Standard Commercial Fishing Licenses; License; or
- (4)(3) Land or Sell License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.4; ~~113-169~~; 113-169.5; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0105 REQUIREMENTS FOR BAIT AND MUSSEL DEALERS

(a) ~~Persons dealing in minnows, live shrimp, or both minnows and live shrimp for bait purposes, who are subject to licensing requirements under G.S. 113-169.3 are required to purchase only the license applicable to finfish dealers. A bona fide dealer in shrimp, licensed under the provisions of G.S. 113-169.3, may, however, deal in minnows as well as live shrimp for bait purposes, as an incident of his operations under his shrimp dealer's license.~~

(b) Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 ~~are~~ shall be required to purchase only the license applicable to clam dealers and ~~meet the shellfish dealer certification requirements in 15A NCAC 030 .0101(a)(11).~~ shall be required to hold a valid Permit and Certificate of Compliance from the Division of Marine Fisheries Shellfish Sanitation and Recreational Water Quality Section, as described in Rule .0101 of this Section.

Authority G.S. 113-134; 113-169.3; ~~113-182~~; 143B-289.52.

15A NCAC 030 .0107 LOST LICENSE REPLACEMENT AND FEES

(a) ~~Lost licenses except Blanket Coastal Recreational Fishing Licenses, endorsements, and commercial fishing vessel registration decals may be replaced upon payment of a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or commercial fishing vessel registration,~~

~~whichever is less.~~ A licensee shall receive a replacement for a commercial license, endorsement, Commercial Fishing Vessel Registration decal, or Recreational Commercial Gear License upon payment to the Division of Marine Fisheries a fee of ten dollars (\$10.00) or a fee equal to the initial cost of the license, endorsement, or Commercial Fishing Vessel Registration, whichever is less.

~~(b) The replacement fee for the Blanket Coastal Recreational Fishing Licenses is five dollars (\$5.00).~~ A licensee shall receive a replacement Coastal Recreational Fishing License or a for-hire license as defined in G.S. 113-174.3 upon payment to the Division of Marine Fisheries a fee of five dollars (\$5.00).

Authority G.S. 113-134; 113-168.1; 113-168.6; 113-169.4; 113-173; 113-174.1; 113-174.2; 113-174.3; 113-182; 143B-289.52.

15A NCAC 030 .0109 ASSIGNMENT OF SCFL STANDARD COMMERCIAL FISHING LICENSE

(a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in accordance with the requirements of this Rule.

~~(a)(b)~~ The Division of Marine Fisheries shall provide assignment forms to the licensee upon issuance of the Standard Commercial Fishing License. ~~request.~~ Assignment must be made on the Only Division assignment forms. forms shall be used to obtain an assignment. On the assignment form, the Standard Commercial Fishing License holder must licensee shall designate what, if any, endorsements are included in the assignment. Endorsements may shall not be assigned independent of the Standard Commercial Fishing License. It is shall be unlawful for the Standard Commercial Fishing License holder licensee or the assignee to fail to submit within five days the completed assignment form to any office of the Division in person or by mail to the Morehead City Division Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If the completed assignment form is not received by the Division within five days from the date it was signed, the assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so noted. An assignment is in effect from the date specified on the assignment form and when:

- (1) the assignment form is properly completed; complete with all required information;
- (2) signatures of the current license holder and the assignee are notarized; and
- (3) the assignee has in their the assignee's possession the current licensee's original actual Standard Commercial Fishing License with License, including applicable endorsements of the current license holder, in accordance with G.S. 113-169.2.

(c) For an extension of time for assignments, a new assignment form shall be completed in accordance with Subparagraphs (b)(1) through (b)(3) of this Rule.

~~(b)(d)~~ Assignments terminate when: shall terminate:

- (1) when the date specified on the assignment form is reached; or

- (2) if the licensee or assignee are determined ineligible for a license or assignment; or
- (3) if the Division receives a notarized statement from the current license holder stating a revised date for an earlier assignment termination; or
- (4) upon the licensee or assignee's death; or
- (5) when the Standard Commercial Fishing License expires.

~~If the properly completed assignment form is not received by the Division within five days from the date it was signed, the assignment is null and void. For an extension of time for assignments, a new assignment form must be completed in accordance with Subparagraphs (a)(1) - (3) of this Rule.~~

~~(e)(e)~~ It is shall be unlawful for an individual assigned a Standard Commercial Fishing License to fail to have available ready at hand for inspection all required documents as stated under G.S. 113-168.1. The assignee when involved in a commercial fishing operation must to fail to have the original actual Standard Commercial Fishing License and License, any assigned endorsements endorsements, and a copy of the assignment form in their the individual's possession ready at hand for inspection. inspection in accordance with G.S. 113-168.1.

~~(d)(f)~~ All landings occurring during the time of the assignment shall be credited to the Standard Commercial Fishing License holder; licensee, not the assignee.

~~(e)(g)~~ It is shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one time. It is shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one time. Assignments may shall only be made by the person issued the Standard Commercial Fishing License licensee and may shall not be further assigned by assignees. Masters identified on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel may shall not assign such licenses.

~~(f)(h)~~ It is shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which they are ineligible.

~~(g)~~ Assignments submitted without complete and required information shall be deemed not in effect and shall not be considered further until resubmitted with all required information.

~~(h)(i)~~ It is shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment and the Standard Commercial Fishing License with any assigned endorsements to the assignor of that license licensee within five days of notice that the assignment has been terminated or a demand by the assignor licensee to return the license.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 143B-289.52.

15A NCAC 030 .0110 LICENSE REFUNDS

All license fees are non-refundable except when if licenses are issued by the Division of Marine Fisheries in error.

Authority G.S. 113-134; 113-168.1; 113-173; 113-182; 143B-289.52; 147-84; 1993 (Regular Session 1994), c. 576, s. 3.

15A NCAC 030 .0111 SURRENDER OF LICENSES

(a) It ~~is~~ shall be unlawful for any licensee to refuse to surrender to an agent of the Secretary all licenses, license receipts, endorsements, commercial fishing vessel registration or decals, and other forms and records relating to the license following service of notice of suspension or revocation of licenses in accordance with G.S. ~~443-171~~ 113-171 and Rule .0114 of this Section.

(b) It ~~is~~ shall be unlawful for any person in custody or possession of any licenses, license receipt, endorsements, commercial fishing vessel registration or decals, and other documentation required to be surrendered to refuse to surrender same to an agent of the Secretary making such demand.

(c) A license issued by the Division in error shall be required to be surrendered immediately upon service of a notice by an agent of the Fisheries Director to surrender the license.

Authority G.S. 113-134; 113-171; 113-182; 143B-289.52; S.L. 2010-145.

15A NCAC 030 .0113 OCEAN FISHING PIER REPORTING REQUIREMENTS

It ~~is~~ shall be unlawful for the responsible party of the Ocean Fishing Pier License to fail to provide to the Division of Marine Fisheries by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail to the electronic mail address provided at the time of license ~~application~~ issuance.

Authority G.S. 113-134; 113-169.4; 113-174.1; 113-182; 143B-289.52.

15A NCAC 030 .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 shall be subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, 14-33, 14-72, or 14-399 shall be deemed a conviction for the purposes of license suspension or revocation.

(c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, second, third, fourth, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction for the purposes of license suspension or revocation. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;

- (2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
- (3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director shall revoke all licenses issued to the licensee; and
- (4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director. Upon service of a notice of suspension or revocation of a license, it shall be unlawful to fail to surrender any license so suspended or revoked.

(e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in Subparagraph (c)(4) of this Rule. For a request for reinstatement following revocation, the former licensee shall demonstrate in the request that the licensee will conduct the operations for which the license is sought in ~~accord~~ accordance with all applicable laws and rules, shall submit the request in writing, and shall ~~send mail~~ send the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of the law.

(g) ~~A licensee shall not willfully~~ It shall be unlawful to evade the service prescribed in this Rule.

Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145.

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 030 .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) ~~Upon~~ After acceptance of a completed ~~application~~, shellfish lease application as set forth in Rule .0202 of this Section, the proposed ~~shellfish~~ lease area shall be inspected by agents of the ~~Division~~. Division of Marine Fisheries. Proposed ~~shellfish~~ lease areas inconsistent with applicable standards contained or referenced in ~~15A NCAC 30 .0204~~ Rule .0201 of this Section shall result in the return of ~~applications~~ the application for amendment to remove the inconsistencies. If the boundaries of the proposed ~~shellfish~~ lease area are modified, the stakes identifying such areas shall be relocated accordingly by the ~~applicant~~. applicant or applicants. The failure of the applicant or applicants to amend ~~applications~~ the application or modify the shellfish lease area identification, when required, within 30 days of notification shall result in denial of ~~such applications~~. the application.

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

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

(d) ~~Upon~~ After approval of ~~leases~~ a shellfish lease by the Secretary, the applicant or applicants shall mark the ~~shellfish bottom leases~~ lease in accordance with Rule .0204 of this Section within 30 days of approval. ~~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 lease contract has been executed by the Secretary.

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

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52.

15A NCAC 030 .0205 SHELLFISH LEASE RENEWAL

(a) ~~Lease~~ Shellfish lease renewal applications shall be provided to ~~lessees~~ lease holders by the Division of Marine Fisheries as follows:

- (1) ~~For for a shellfish bottom leases, lease, a renewal applications~~ application shall be provided in January of the year of expiration.
- (2) ~~For for a shellfish water column leases, lease, a renewal applications~~ application shall be provided at least 90 days prior to the expiration ~~dates~~. date.

(b) ~~Lease~~ A shellfish lease renewal ~~applications~~ application shall be accompanied by ~~management plans meeting a Shellfish Lease Management Plan that meets the requirements of 15A NCAC 030 .0202(b). Rule .0202 of this Section.~~ The non-refundable filing fee set forth in G.S. 113-202(j) shall accompany each renewal application for a shellfish bottom ~~leases~~. lease.

(c) ~~A survey for renewal leases shall be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.~~

(c) To be eligible to renew a shellfish lease, persons holding any acres under a shellfish lease or franchise shall meet the requirements established in Rules .0201 and .0204 of this Section and 15A NCAC 030 .0503(a).

(d) ~~When If it is determined, after due notice to the lessee, shellfish lease holder and after opportunity for the lessee lease holder to be heard, that the lessee lease holder has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any shellfish bottom or water column lease. The lessee shellfish lease holder may appeal the Secretary's decision by initiating filing a petition for a contested case as outlined in 15A NCAC 03P .0102. under G.S. 150B-23.~~

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to recommend approval of approve renewal of a shellfish lease in an area closed to shellfishing by reason of pollution. designated as polluted by a proclamation issued by the Fisheries Director. Excluded from this requirement are shellfish leases located in conditionally approved waters that have been temporarily closed when the conditions of the written management plan are not met as described in 15A NCAC 18A .0905. Shellfish leases partially closed due to pollution must shall be amended to exclude the area closed to shellfishing shellfish harvest prior to renewal. For purposes of lease renewal determinations, an area shall be considered closed to shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal except shellfish leases in areas which have been closed for more than 50 percent of the days during the final four years prior to renewal and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.

(f) If the Secretary declines to renew a shellfish lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee, lease holder, may issue a renewal lease for all or part of the area previously leased to the lessee lease holder that contains conditions necessary to conform the renewal lease to the requirements of this Section for new leases.

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52.

15A NCAC 030 .0206 LEASE PROTEST SHELLFISH LEASE APPLICATION: REQUEST FOR REVIEW

~~(a) Should any person object to the granting of any initial or renewal lease, he has the right to protest its issuance prior to the granting of the lease by the Secretary. The protestant may file a sworn statement of protest with the Division stating the grounds for protest. The Secretary shall notify both the prospective lessee and the protestant upon receipt of a protest, and shall conduct such investigation as he deems necessary, and shall notify both parties of the outcome of his investigation. Protestants or applicants receiving an adverse recommendation on the lease application~~

~~from the Secretary may appeal this decision as outlined in G.S. 113-202(g).~~

~~(b)(a) Any member of the public shall be allowed an opportunity to comment on any shellfish lease application during the public comment period and subsequent public hearing at which the lease application is being considered by the Secretary. Secretary as set forth in G.S. 113-202.~~

(b) Procedures for how an applicant or a person other than the applicant who is aggrieved may proceed with a contested case based on dissatisfaction of the Secretary's decision on a shellfish lease application are provided in G.S. 113-202(g). Additionally, a person other than the applicant who is aggrieved may submit a request for a determination of the appropriateness of a contested case hearing. The request and any supporting documentation for the basis of the aggrieved person seeking to commence a contested case shall be submitted within 30 days after the disputed decision is made to the Shellfish Cultivation Lease Review Committee and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. The request shall be submitted on a form provided by the Division.

(c) The Shellfish Lease Review Committee shall notify the aggrieved person of the date of the public meeting for the Committee to consider the request no later than seven calendar days before the date of the public meeting.

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

15A NCAC 030 .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS

~~(a) The owners of shellfish leases and franchises The holder or holders of a shellfish lease or franchise shall provide an annual production reports report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted planted, purchased, and harvested in connection with management for commercial production. Reporting forms will be provided to owners of shellfish bottom leases and recognized franchises during the period that annual notices of rent due are provided to owners of shellfish bottom leases in accordance with G.S. 113-202(j). Reporting forms will be provided to owners of water column leases prior to each annual anniversary date. in accordance with Rules .0201 and .0202 of this Section. The report shall include supporting documentation with evidence of purchased seed in accordance with Rule .0201 of this Section.~~

(b) The Division shall provide reporting forms annually to each shellfish lease or franchise holder to be used for the annual production report.

~~(b)(c) Failure to furnish by the holder or holders of the shellfish lease or franchise to submit the required annual production report, correct and in detail requested, report with all required fields completed, or filing a report containing false information, can constitute information constitutes grounds for termination. termination as set forth in Rule .0208 of this Section.~~

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52.

**15A NCAC 030 .0208 ~~TERMINATION OF~~
PROCEDURES FOR SHELLFISH BOTTOM LEASES
AND FRANCHISES AND WATER COLUMN LEASES**

(a) ~~Procedures for termination of shellfish leaseholds leases and franchises are provided in G.S. 113-202. An appeal of the Secretary's decision to terminate a leasehold is governed by G.S. 150B-23.~~

~~(b) Substantial breach of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes the following, except as provided in Paragraph (c) of this Rule:~~

- ~~(1) failure to meet shellfish production and marketing requirements for bottom leases or franchises in accordance with Rule .0201 of this Section;~~
- ~~(2) failure to maintain a planting effort of cultch or seed shellfish for bottom leases or franchises in accordance with Rule .0201 of this Section;~~
- ~~(3) failure either to meet shellfish production and marketing requirements or to maintain a planting effort of cultch or seed shellfish for water column leases in accordance with Rule .0201 of this Section;~~
- ~~(4) the Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; and~~
- ~~(5) the Attorney General initiates action for the purpose of vacating or annulling letters patent granted by the State, in accordance with G.S. 146-63.~~

~~(e)(b) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a leaseholder shellfish lease or franchise holder that failed to meet the requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, Rule .0201 or the rules of this Section or this Rule that govern a determination of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director his or her or the Fisheries Director's designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the leaseholder lease or franchise holder to fail to meet lease requirements:~~

- ~~(1) death, illness, or incapacity of the leaseholder shellfish lease or franchise holder or his the holder's immediate family as defined in G.S. 113-168 that prevented or will prevent the leaseholder lease or franchise holder from working the lease;~~
- ~~(2) damage to the shellfish lease or franchise from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;~~
- ~~(3) shellfish mortality caused by disease, natural predators, or parasites; or~~

- ~~(4) damage to the shellfish lease or franchise from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.~~

~~(d)(c) In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease or franchise number. In the case of hardship as described in Subparagraph (e)(4)(b)(1) of this Rule, the notice shall also state the name of the leaseholder shellfish lease or franchise holder or immediate family member and either the date of death or the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also include documentation of damage to the shellfish lease or franchise. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell St., Street, P.O. Box 769, Morehead City, NC 28557.~~

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52.

**15A NCAC 030 .0209 ~~TRANSFER OF INTEREST~~
ASSIGNMENT OF SHELLFISH LEASES AND
FRANCHISES**

~~(a) For the purpose of effecting assignments of shellfish leases or franchises in accordance with this Rule:~~

- ~~(1) "transfer" shall be defined as any permanent assignment of a shellfish lease or franchise, in whole or in part.~~
- ~~(2) "sublease" shall be defined as any temporary assignment of a shellfish lease or franchise, in whole or in part.~~

~~(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 030 .0202(b).~~

~~(b) No transfer or sublease of a shellfish lease or franchise, in whole or in part, shall be valid until notice is provided to the Division of Marine Fisheries as provided in Article 16 of Chapter 113 of the North Carolina General Statutes and the Division provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of the North Carolina General Statutes and Marine Fisheries Commission Rules. A transfer may only be made by the use of a form provided and approved by the Division.~~

~~(c) Notice to transfer or sublease a shellfish lease or franchise shall include the shellfish lease or franchise number, county in which the lease or franchise is located, and the name of the transferee or sub-lessee. The transferee or sub-lessee of a shellfish lease shall provide to the Division the required Shellfish Lease Management Plan and proof of completion of training requirements in accordance with Rule .0202 of this Section.~~

~~(b)(d) If the new owner obtains a The smallest portion of an existing shellfish bottom lease or franchise, it shall not contain less than franchise to be transferred or subleased shall be one-half acre acre. and the required notification to the Division shall be~~

~~accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).~~

~~(e) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).~~

~~(e) A shellfish lease or franchise shall not be transferred or subleased to a nonresident of North Carolina in accordance with G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, and G.S. 113-206.~~
(d)(f) Water column leases are not transferrable except when the Secretary approves such transfer. A shellfish water column lease shall only be transferred in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).

~~(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.~~

Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206; 143B-289.52.

15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR 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 03O .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.~~
(b)(a) Acceptable management plans, Shellfish Management Plans, prepared in accordance with the standards in 15A NCAC 03O .0202(b), Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

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

~~(d)(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in 15A NCAC 03O .0201(e) accordance with Rules .0201 and .0207 of this Section 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 Shellfish Management Plans required in Paragraph (b)(a) 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; 113-182; 113-201; 113-202; 113-205; 113-206; 143B-289.52.

15A NCAC 03O .0211 PROTECTION OF PRIVATE SHELLFISH INTEREST FISHING GEAR REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES

~~(a) It is shall be unlawful to use any trawl net, long haul seine, swipe net, dredge, or mechanical method for elams or oysters~~

shellfish on any shellfish lease or franchise except; unless it has been duly authorized by the Fisheries Director as provided in 15A NCAC 3K .0206 and .0303.

(1) for a holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; or

(2) for the purpose of placing and retrieving cages, bags, or other aquaculture gear within any shellfish lease or franchise.

(b) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued by the Division of Marine Fisheries in compliance with 15A NCAC 03O .0500.

Authority G.S. 113-134; 113-182; 113-201; 113-206; 143B-289.52.

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

15A NCAC 03O .0301 ELIGIBILITY FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) It is shall be unlawful for any individual to hold more than one Recreational Commercial Gear License.
(b) Recreational Commercial Gear Licenses shall only be issued to individuals.

Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 113-221; 143B-289.52.

15A NCAC 03O .0302 AUTHORIZED GEAR FOR RECREATIONAL COMMERCIAL GEAR LICENSES

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) One one seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2-1/2 two and one-half inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may be used only to transport the seine;
- (2) One one shrimp trawl with a headrope not exceeding 26 feet in length per ~~vessel.~~ vessel;
- (3) With with or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) One one multiple hook or multiple bait trotline up to 100 feet in length;
- (5) Gill Nets; gill nets;
 - (A) Not not more than 100 yards of gill nets with a mesh length equal to or greater than 2-1/2 two and one-half inches except as provided in Part (C) of this Subparagraph. Attendance ~~is~~ shall be required at all times;
 - (B) Not not more than 100 yards of gill nets with a mesh length equal to or greater than 5-1/2 five and one-half

inches except as provided in Part (C) of this Subparagraph. Attendance ~~is shall be~~ required when used from one hour after sunrise through one hour before sunset in ~~internal-coastal fishing waters~~ Internal Waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance ~~is shall be~~ required at all times in ~~internal-coastal fishing waters~~ Internal Waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W; ~~and~~

- (C) ~~Not not~~ more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on ~~board, board~~ a vessel, a maximum of 200 yards may be used from a vessel; and
- (D) ~~It is it shall be~~ unlawful to possess ~~aboard on board~~ a vessel more than 100 yards of gill nets with a mesh length less than ~~5-1/2 five and one-half~~ inches and more than 100 yards of gill nets with a mesh length equal to or greater than ~~5-1/2 five and one-half~~ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on ~~board, board~~ a vessel. ~~It is shall be~~ unlawful to possess ~~aboard on board~~ a vessel more than 200 yards of gill nets with a mesh length less than ~~5-1/2 five and one-half~~ inches and more than 200 yards of gill nets with a mesh length equal to or greater than ~~5-1/2 five and one-half~~ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on ~~board, board~~ a vessel;
- (6) ~~A one~~ hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304;
- (7) ~~Skimmer skimmer~~ trawls not exceeding 26 feet in total combined ~~width, width; and~~
- (8) ~~One one~~ pound net used to take shrimp with each lead 10 feet or less in length and with a minimum lead net mesh of ~~1-1/2 one and one-half~~ inches, and enclosures constructed of net mesh of ~~1-1/4 one and one-fourth~~ inches or greater and with all dimensions being 36 inches or less. Attendance ~~is shall be~~ required at all times and all gear ~~must shall~~ be removed from

the water when not being fished. Gear is to be marked and set as specified in 15A NCAC 03J .0501.

(b) It ~~is shall be~~ unlawful to use more than the quantity of authorized gear specified in ~~Subparagraphs (a)(1) through (a)(8) of Paragraph (a) of this Rule, regardless of the number of individuals aboard on board~~ a vessel possessing a valid Recreational Commercial Gear License.

(c) It ~~is shall be~~ unlawful for ~~a person an individual~~ to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.

(d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries Commission.

Authority G.S. 113-134; 113-173; 113-182; 143B-289.52.

15A NCAC 03O .0303 POSSESSION LIMITS FOR RECREATIONAL COMMERCIAL GEAR LICENSE POSSESSION LIMITS LICENSES

(a) It ~~is shall be~~ unlawful to possess more than a single recreational possession limit when only one ~~person aboard individual on board~~ a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a) of this Section~~ is used, regardless of the number of ~~persons individuals on board, board~~ a vessel.

(b) It ~~is shall be~~ unlawful to possess individual recreational possession limits in excess of the number of individuals ~~aboard on board~~ a vessel holding a valid Recreational Commercial Gear ~~Licenses License~~ except as provided in Paragraph (f) of this Rule.

(c) It ~~is shall be~~ unlawful for any ~~person individual~~ who holds both a Recreational Commercial Gear License and a Standard or Retired Standard Commercial Fishing License and who is in possession of identified recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a), Rule .0302(a) of this Section~~ to exceed the single recreational possession limit.

(d) It ~~is shall be~~ unlawful for ~~persons aboard individuals on board~~ a vessel collectively holding only one Recreational Commercial Gear License and any Standard Commercial Fishing License or Retired Standard Commercial Fishing License and who are in possession of any identified recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a), Rule .0302(a) of this Section~~ to exceed ~~one the single~~ recreational possession limit.

(e) It ~~is shall be~~ unlawful to possess more than 48 quarts, heads on, or 30 quarts, heads off, of shrimp when only one ~~person aboard individual on board~~ a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing equipment as ~~defined described in 15A NCAC 03O .0302(a) of this Section~~ is used.

(f) It ~~is shall be~~ unlawful to possess more than 96 quarts, heads ~~on on~~, or 60 quarts, heads off, of shrimp if more than one ~~person aboard individual on board~~ a vessel possesses a valid Recreational Commercial Gear License and recreational commercial fishing

equipment as ~~defined~~ described in ~~45A NCAC 030 Rule .0302(a) of this Section~~ is used.

Authority G.S. 113-134; 113-170.4; 113-173; 113-182; 143B-289.52.

SECTION .0400 – STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY

15A NCAC 030 .0401 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD

(a) The ~~Chairman Chair~~ of the Marine Fisheries Commission, the Secretary of the Department of ~~Environment and Natural Resources~~, Environmental Quality, and the Fisheries Director of the Division of Marine Fisheries may each name a designee and an alternate designee to serve on the Standard Commercial Fishing License Eligibility Board as their representative in their absence.

(b) The Standard Commercial Fishing License Eligibility Board shall not review an application for eligibility without a quorum of the Eligibility Board members or designees being present. Two or more members of the Standard Commercial Fishing License Eligibility Board or their designees constitute a quorum.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0402 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY APPLICATION PROCESS

(a) Application forms for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool ~~shall be~~ are available at all offices of the Division of Marine Fisheries and online at <https://deq.nc.gov/about/divisions/marine-fisheries/licenses-permits-and-leases/commercial-fishing-licenses/eligibility-pool> and ~~must~~ shall be submitted to the Morehead City Office of the ~~Division of Marine Fisheries~~ Division, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557 for processing.

(b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry in the eligibility pool Standard Commercial Fishing License Eligibility Pool at any one time.

(c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing License Eligibility Pool.

(d) If an applicant has died or becomes ineligible and is subsequently selected from the eligibility pool, Standard Commercial Fishing License Eligibility Pool, that license eligibility shall automatically revert to the eligibility pool Eligibility Pool.

(e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License ~~may not apply for pool eligibility~~ shall not be eligible to apply for a Standard Commercial Fishing License through the Standard

Commercial Fishing License Eligibility Pool for two years from the date of the last ~~transfer~~ transfer, except as provided in ~~45A NCAC 030 .0404(3)~~ Rule .0404(3) of this Section.

(f) Applicants shall notify the Division of ~~Marine Fisheries~~ within 30 days of a change of address.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0403 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY BOARD REVIEW

(a) After determination of eligibility by the Standard Commercial Fishing License Eligibility Board, applicants will be notified in writing as to the ~~applicant's~~ applicant meeting or not meeting required eligibility criteria for the Standard Commercial Fishing License Eligibility Pool.

(b) The Marine Fisheries Commission shall determine the number of licenses available from the ~~pool~~ Standard Commercial Fishing License Eligibility Pool at ~~their~~ its first regularly scheduled meeting following July 1 of each year.

(c) The Standard Commercial Fishing License Eligibility Board shall meet to review applications as often as deemed necessary by the ~~Chairman Chair~~ of the Eligibility Board.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0404 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY CRITERIA

In determining eligibility of an ~~application~~ applicant for the Standard Commercial Fishing License Eligibility Pool, the Standard Commercial Fishing License Eligibility Board shall apply the following criteria:

- (1) ~~Involvement in Commercial Fishing;~~ involvement in commercial fishing:
 - (a) ~~Significant~~ significant involvement in the commercial fishing industry for three of the last five years; ~~or~~
 - (b) ~~Significant~~ significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; ~~or~~
 - (c) ~~In~~ in the case of an applicant who is under 16 years of age, significant involvement in commercial fishing for two out of the last five years with a parent, legal guardian, ~~grandparent~~ grandparent, or other adult; or
 - (d) ~~Significant~~ significant involvement of the applicant's family in commercial fishing. For the purpose of this ~~Sub-item~~, Sub-Item, family shall include mother, father, ~~brother~~, sister, brothers, sisters, spouse, children, ~~grandparents~~ grandparents, or legal guardian.

For the purposes of this Rule, ~~significant involvement means~~ "significant involvement" shall mean persons or corporations who are

engaged in the actual taking of fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer or the dealer's employees who ~~purchases~~ purchase fish at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of ~~landing; landing,~~ those who sell or make commercial or recreational fishing ~~gear; gear,~~ those who operate bait and tackle shops unless they are engaged in the actual taking of bait for ~~sale; sale,~~ or those who work in fish markets or crab picking ~~operations; operations;~~

(2) ~~Compliance with Applicable Laws and Regulations;~~ compliance with applicable laws, regulations, and rules;

(a) ~~The~~ the applicant shall not have any licenses, ~~endorsements or commercial fishing vessel registrations~~ endorsements, or Commercial Fishing Vessel Registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; ~~or~~

(b) ~~If~~ if selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, ~~endorsements or registrations~~ endorsements, or Commercial Fishing Vessel Registrations or the right to hold such issued by the Division of ~~Marine Fisheries~~ are suspended or revoked; ~~or~~

(c) ~~Four~~ four convictions within the last three years or the number of convictions ~~which~~ that would cause suspension or revocation of ~~license, endorsement, or registration~~ licenses, endorsements, or Commercial Fishing Vessel Registrations within the last three years shall result in the application being ~~denied; or denied.~~ An applicant for the Standard Commercial Fishing License Eligibility Pool shall provide certification that the applicant does not have four or more marine or estuarine resource convictions during the previous three years; and

(d) ~~A~~ a record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool,

the term convictions shall include ~~but not be limited to~~ any conviction for violation of any provision of Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes; statutes,~~ any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such ~~statute; statute,~~ any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes; statutes,~~ any conviction for violation of any provision of Article 7 of Chapter 143B of the North Carolina General Statutes and any rule implementing or authorized by such ~~statutes; statutes,~~ any conviction of resist, obstruct, or delay involving a ~~Marine Patrol Officer or Wildlife Officer~~ Marine Fisheries Inspector or Wildlife Protector under G.S. 14-223; 14-223, and any conviction involving assaultive behavior toward a ~~Marine Patrol Officer~~ Marine Fisheries Inspector or other governmental official of the Department of ~~Environment and Natural Resources~~ Environmental Quality or the Wildlife ~~Resources Commission; Commission;~~ Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.

(3) ~~The~~ the responsible party shall not have transferred a Standard Commercial Fishing License granted by the ~~Standard Commercial Fishing License Eligibility Board; Board; and~~

(4) ~~All applicants~~ an applicant for the Standard Commercial Fishing License Eligibility Pool ~~must~~ shall meet all other statutory eligibility requirements for ~~the~~ a Standard Commercial Fishing License.

Authority G.S. 113-134; 113-168.1; 113-168.2; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 030 .0405 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL APPLICATION DOCUMENTATION

(a) Documentation for ~~applications; applications for~~ determination of eligibility for the Standard Commercial Fishing License Eligibility Pool shall include:

(1) ~~Statements~~ statements from individuals verifying the ~~applicant's involvement must~~ applicant's involvement in commercial fishing or the commercial fishing industry, which shall contain the individual's individual's name, address address, and telephone number number, and must be notarized; the individual's signature shall be notarized;

(2) ~~Proof~~ proof of income derived from commercial fishing or the commercial fishing

industry. Proof of this income shall be tax ~~records, records; and~~

- (3) ~~The~~ the extent to which the applicant has complied with federal and state laws, regulations, and rules relating to coastal fishing and protection of the environment. Federal compliance will be verified by a notarized statement from the applicant that ~~he~~ the applicant has complied with federal laws.

(4)(b) All documents required by this Rule ~~must~~ shall be notarized.

(5)(c) Applications shall be legible and complete or they will be returned.

(6)(d) It ~~is~~ shall be unlawful to submit false statements on applications or supporting documents. If eligibility is based on false information provided by the applicant, this eligibility ~~is~~ shall be automatically revoked.

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

15A NCAC 03O .0406 STANDARD COMMERCIAL FISHING LICENSE ELIGIBILITY POOL CERTIFICATION

Annual certification to maintain an eligible application in the Standard Commercial Fishing License Eligibility Pool shall be as follows:

- (1) ~~The~~ the applicant shall certify that the information on ~~his~~ the applicant's original application is correct and that ~~he~~ the applicant desires to remain in the Standard Commercial Fishing License Eligibility Pool. A certification form shall be provided and mailed to the applicant at the last known address by the Division of Marine Fisheries;
- (2) ~~A certification form shall be provided and mailed to the applicant at the last known address by the Division.~~
- (3)(2) ~~This certification,~~ the certification form with any ~~changes~~ changes, such as address, phone number, or updated fisheries involvement information since the last application or ~~certification~~ certification, ~~must~~ shall be notarized and submitted to the Division within 12 months of the initial application and annually ~~thereafter,~~ thereafter; and
- (4)(3) ~~Failure~~ failure to return certification that an application is correct or with changes within 30 days from when the Division mailed the form to the applicant shall result in the application being ~~deleted~~ removed from the Standard Commercial Fishing License Eligibility Pool. An applicant that has been removed from the Standard Commercial Fishing License Eligibility Pool shall receive a notice from the Division.
- (5) ~~An applicant that has been deleted from the Standard Commercial Fishing License~~

~~Eligibility Pool shall receive a notice from the Division.~~

Authority G.S. 113-134; 113-182; 143B-289.52; S.L. 1998-225, s. 4.24.

SECTION .0500 - PERMITS

15A NCAC 03O .0502 PERMIT CONDITIONS; GENERAL PERMIT CONDITIONS

(a) It shall be unlawful to violate any permit condition.

(b) The following conditions shall apply to all permits issued by the Fisheries Director:

- (1) ~~it is unlawful to~~ it shall be unlawful to:
 - (A) operate under the permit except in areas, at times, and under conditions specified on the ~~permit;~~ permit.
 - (2)(B) ~~it is unlawful to~~ operate under a permit without having the permit or copy thereof in possession of the permittee or ~~his or her~~ the permittee's designees at all times of operation and the permit or copy thereof shall be ready at hand for inspection, except for a Pound Net ~~Permits;~~ Set Permit.
 - (3)(C) ~~it is unlawful to~~ operate under a permit without having a current valid picture identification in possession and ready at hand for ~~inspection;~~ inspection.
 - (4)(D) ~~it is unlawful to~~ refuse to allow inspection and sampling of a permitted activity by an agent of the ~~Division;~~ Division of Marine Fisheries.
 - (5)(E) ~~it is unlawful to~~ fail to provide complete and accurate information requested by the Division in connection with the permitted ~~activity;~~ activity.
 - (F) provide false information in the application for initial issuance, renewal, or transfer of a permit.
 - (6)(G) it is unlawful to hold a permit issued by the Fisheries Director when if not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 03O .0501; Rule .0501 of this Section.
 - (7)(H) ~~it is unlawful to~~ fail to provide reports within the timeframe required by the specific permit ~~conditions;~~ conditions.
 - (8)(I) ~~it is unlawful to~~ fail to keep such records and accounts as required by the rules in this Chapter for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational ~~fisheries;~~ fisheries.

- (9)(J) ~~it is unlawful to~~ assign or transfer permits issued by the Fisheries Director, except for a Pound Net ~~Permits Set Permit~~ as authorized by 15A NCAC 03J .0504; .0504.
- (10)(2) the Fisheries ~~Director, Director or his agent, the Fisheries Director's agent~~ may, by conditions of the permit, ~~specify impose any or all of the following restrictions for the permitted purposes:~~
- (a) ~~species;~~
 - (b) ~~quantity or size;~~
 - (c) ~~time period;~~
 - (d) ~~location;~~
 - (e) ~~means and methods;~~
 - (f) ~~disposition of resources;~~
 - (g) ~~marking requirements; or~~
 - (h) ~~harvest conditions.~~
 - (A) specify time;
 - (B) specify area;
 - (C) specify means and methods;
 - (D) specify requirements for a commercial fishing operation or for recreational purposes;
 - (E) specify record keeping and reporting requirements;
 - (F) specify season;
 - (G) specify species;
 - (H) specify size;
 - (I) specify quantity;
 - (J) specify disposition of resources;
 - (K) specify marking requirements; and
 - (L) specify harvest conditions.
- (11)(3) unless specifically stated as a condition on the permit, all statutes, ~~rules~~ rules, and proclamations shall apply to the permittee and ~~his or her designees; and the permittee's designees.~~
- (12) as a condition of accepting the permit from the Fisheries Director, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.

- (b) If a license is required to hold a permit:
- (1) all permits shall be suspended or revoked if the permittee's license privilege has been suspended or revoked as set forth in G.S. 113-171 and Rule .0114 of this Subchapter. The duration of the permit suspension or revocation shall be the same as the license suspension or revocation.
 - (2) in the event a person makes application for a new permit during any period of license or permit suspension, no new permit shall be issued during the suspension period.
 - (3) in the case of revocation of license privileges, the former licensee shall not be eligible to apply for reinstatement of a revoked permit.
- (c) If a license is not required to hold a permit, in the case of revocation of a permit, the former permittee shall not be eligible to apply for reinstatement of a revoked permit for a period of six months.
- (a)(d) It shall be unlawful to violate any permit condition. For violation of ~~specific~~ permit conditions (as specified on the permit), permits may be suspended or revoked according to the following schedule:
- (1) violation of one ~~specific~~ permit condition in a ~~three-year~~ three-year period, permit shall be suspended for 10 ~~days;~~ days.
 - (2) violation of two ~~specific~~ permit conditions in a ~~three-year~~ three-year period, permits shall be suspended for 30 ~~days;~~ days.
 - (3) violation of three ~~specific~~ permit conditions in a ~~three-year~~ three-year period, permits shall be revoked for a period not less than six months.
 - (4) violation of any permit conditions as set forth in 15A NCAC 03J .0505(a), permits may be revoked and the former permittee may not be eligible to apply for any future Pound Net Set Permits.

If several permit conditions are violated as a result of a single transaction or occurrence, the permit violations shall be treated as a single violation for the purpose of suspension or revocation. If the permit condition violated is the refusal to provide information upon request by Division staff, either by telephone, in writing or in person, the Fisheries Director may suspend the permit. Such permit may be reinstated 10 days after the requested information is provided.

(b) ~~All permits will be suspended or revoked when the permittee's license privilege has been suspended or revoked as set out in G.S. 113-171. The duration of the suspension or revocation shall be the same as the license suspension or revocation. In the event the person makes application for a new permit during any period of license suspension, no new permit will be issued during the suspension period. In case of revocation of license privileges, the minimum waiting period before application for a new permit to be considered will be six months.~~

(e)(e) Permit designees shall not be permitted to participate in a permit operation during any period they are under license suspension or revocation.

(f) If violation of permit conditions requires suspension or revocation of a permit, the Fisheries Director shall cause the

Authority G.S. 113-134; 113-169.1; 113-182; 113-210; 143B-289.52.

15A NCAC 03O .0504 SUSPENSION/REVOCATION SUSPENSION AND REVOCATION OF PERMITS

(a) All commercial and recreational permits issued under Article 14A, Article 14B, and Article 25A of Chapter 113, and rules of the Marine Fisheries Commission shall be subject to suspension and revocation. For the purpose of this Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance".

permittee to be served with written notice of the intent to commence suspension or revocation. If the permittee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of the intent to commence suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, and shall state the grounds upon which it is based.

(g) The Fisheries Director shall order summary suspension of a permit if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the permittee, whichever is later.

~~(d)~~(h) Upon service of a notice of suspension or revocation of a permit, it is shall be unlawful to fail to surrender any permit so suspended or revoked.

(i) It shall be unlawful to fail to surrender a permit issued by the Division in error immediately upon service of a notice by an agent of the Fisheries Director to surrender the permit.

(j) It shall be unlawful to evade the service prescribed in this Rule.

(k) It shall be unlawful to fail to remove all gear, markers, and devices associated with an Aquaculture Operation Permit within 30 days after expiration of the Aquaculture Operation Permit, termination of a shellfish lease for which the Aquaculture Operation Permit was issued, or notice by the Fisheries Director that an existing Aquaculture Operation Permit has been revoked or denied. Similar requirements for gear removal for a Pound Net Set Permit are described in 15A NCAC 03J .0505.

Authority G.S. 113-134; 113-171; 113-182; 113-202; 113-221.2; 143B-289.52; 150B-3; S.L. 2010-145.

SUBCHAPTER 03P - ~~HEARING~~ ADMINISTRATIVE PROCEDURES

SECTION .0100 - HEARING PROCEDURES

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

(a) Except in cases where summary suspension is applicable, before the Division of Marine Fisheries may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice shall be given to the license holder that the license holder may file a petition for a contested case in accordance with G.S. 113-171(e) and may request a final agency decision in accordance with G.S. 113-171(f).

~~(a)~~(b) For the purpose of this Rule and in accordance with G.S. 150B-2, "license" "permit" includes "permit" as well as "certification" and "certificate of compliance."

~~(b)~~(c) Except in cases where G.S. 443-474 113-171, 15A NCAC 03O .0114, or summary suspension is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, permit, notice shall be given to the license holder that permittee that the permittee:

(1) may request an opportunity to show compliance with all requirements for retention of the permit by submitting a statement in writing to the personnel designated in the notice to commence proceedings; and

~~(4)~~(2) the license holder has a the right, through filing a request for a contested case hearing in the Office of Administrative Hearings, to a hearing before an administrative law judge, judge and a final agency decision by the Marine Fisheries Commission; and

~~(2) the license holder may request an opportunity to show compliance with all requirements for retention of the license by submitting a statement in writing to the personnel designated in the notice to commence proceedings.~~

~~(e)~~(d) Any statements submitted by the license holder permittee to show compliance with all requirements for retention of the license permit shall be postmarked or emailed within 45 10 days of receipt of the notice to commence ~~proceedings~~. proceedings, except for a permit related to endangered or threatened species or a species managed by a quota, any statements to show compliance shall be postmarked or emailed within five days of receipt of the notice to commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and ~~mailed if mailed, sent~~ to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC ~~28557~~. 28557, or if emailed, sent to the email address provided in the notice for the designated personnel.

~~(d)~~(e) Upon receipt of a statement and any supporting documentation from the license holder, permittee, the Division shall review the statement and, within 45 10 days, shall notify the license holder permittee in writing with the Division's determination whether the license holder permittee demonstrated compliance with all requirements for retention of the license permit. In making this determination, the Division may consider criteria including material changes made enabling the license holder permittee to conduct the operations for which the license permit is held in ~~accord~~ accordance with all applicable laws and rules rules, and processing errors made by the Division.

~~(e) The Division shall order summary suspension of a license if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the license holder, whichever is later.~~

Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23.

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

Administrative Contested case hearings shall be held in accordance with G.S. 150B, and the administrative hearing procedures codified at 15A NCAC 1B .0200. Article 3 of Chapter 150B of the General Statutes.

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

SECTION .0200 - DECLARATORY RULINGS

15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a declaratory ruling as provided in G.S. ~~150B-4~~. 150B-4 and rules of this Section.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be ~~filed submitted~~ in writing ~~with the Director of the~~ to the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, Department of Environment and Natural Resources (DENR), 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557.

(b) All requests shall include the following:

- (1) the ~~aggrieved person's~~ petitioner's name and address;
- (2) the rule, ~~statute~~ statute, or order upon which a ruling is desired;
- (3) a ~~concise~~ statement as to whether the request is for a ruling ~~on~~ on:
 - (A) the validity of a ~~rule or rule~~;
 - (B) ~~on~~ the applicability of a rule, ~~order~~ order, or statute to a given factual situation; or
 - (C) a conflict or inconsistency within the Commission or the Department of Environmental Quality regarding interpretation of a law or rule adopted by the Commission;
- (4) arguments or data ~~which that~~ demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to ~~him~~; the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner; ~~and~~
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

~~(b)(c)~~ A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on the applicability of a rule, order, or statute must shall include a description of the statement of the specific facts to a given factual situation on which the ruling is to be based. and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the aggrieved person=s reasons for questioning the validity of the rule. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the

conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask for both multiple types of declaratory rulings in a single request. A request for a ruling must include or be accompanied by:

- (1) a statement of the facts proposed for adoption by the Commission; and
- (2) a draft of the proposed ruling.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Commission Chair.

~~(e) Before deciding the merits of the request, the Commission may:~~

- ~~(1) request additional written submissions from petitioner(s);~~
- ~~(2) request a written response from the Division staff or any other person; or~~
- ~~(3) hear oral argument from the petitioner(s) and Division staff.~~

~~(d) Unless the Division waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of facts submitted by the parties.~~

~~(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

~~(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:~~

- ~~(1) the petitioner(s) and the Division cannot agree on a set of facts sufficient to support a meaningful ruling;~~
- ~~(2) there has been a similar determination in a previous contested case or declaratory ruling;~~
- ~~(3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or~~
- ~~(4) no genuine controversy exists as to the application of a statute or rule to the factual situation presented.~~

~~(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:~~

- ~~(1) the request for a ruling;~~
- ~~(2) any written submissions by the parties;~~
- ~~(3) the statement of facts on which the ruling was based;~~
- ~~(4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;~~
- ~~(5) any other matter considered by the Commission in making the decision; and~~

- (6) ~~the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.~~

(h) ~~A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.~~

(i) ~~Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

15A NCAC 03P .0203 DEFINITION DISPOSITION OF REQUESTS FOR DECLARATORY RULING

(a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for declaratory ruling based on the requirements of this Section.

(b) Before the Commission decides the merits of the request, the Commission Chair may:

- (1) request additional written submissions from the petitioner;
- (2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of this Paragraph; and
- (3) request oral arguments from the petitioner or the petitioner's legal counsel.

(c) Unless the Division of Marine Fisheries waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The Division shall be allowed to present a written response and oral arguments to the Commission at a regularly scheduled meeting.

(d) The Commission shall make a decision to grant or deny the request in accordance with G.S. 150B-4.

(e) The Commission shall deny the request upon making any of the following findings:

- (1) the request is not complete;
- (2) the petitioner is not a person aggrieved;
- (3) there has been a similar determination in a previous contested case or declaratory ruling;
- (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation presented;
- (6) the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (7) the information provided by the petitioner, the Department, or any interveners does not support a determination that a rule is invalid; or
- (8) there is no material conflict or inconsistency within the Commission or Department

regarding the law or rule identified by the petitioner.

(f) The Commission shall keep a record of each declaratory ruling, which shall include the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the statement of facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(g) For purposes of Rule .0202 of this Section, a declaratory ruling shall be deemed to be "in effect" until in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered; amended, altered or repealed;
- (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) until the Commission changes the declaratory ruling prospectively for good reasons; prospectively; or
- (4) until any court sets aside the declaratory ruling in litigation between the Commission or Department of Environment and Natural Resources Environmental Quality and the party requesting the ruling, rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4.

SECTION .0300 - PETITIONS FOR RULEMAKING

15A NCAC 03P .0301 FORM AND CONTENTS OF PETITION PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission (~~hereinafter referred to as the Commission~~) shall ~~make his~~ submit the person's request in a written petition addressed to the ~~Chairman of the~~ Marine Fisheries Commission Chair and submitted addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Commission staff at: Marine Fisheries Commission Division of Marine Fisheries PO Box 769 Morehead City, North Carolina 28557.

- (b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:
- (1) the text of the proposed rule(s);
 - (2) the statutory authority for the agency to promulgate the rule(s);
 - (3) a statement of the reasons for adoption of the proposed rule(s);
 - (4) a statement of the effect on existing rules;
 - (5) copies of any documents and data supporting the proposed rule(s);
 - (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including an estimate of cost factors for persons affected by the proposed rule(s);
 - (7) a description of those most likely to be affected by the proposed rule(s); and
 - (8) the name(s) and address(es) of the petitioner(s).
- (1) the text of the proposed rules for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing rules;
- (3) a statement of the effect of the requested rule changes on:
- (A) existing rules;
 - (B) existing practices in the area involved;
 - and
 - (C) those most likely to be affected by the requested rule changes; and
- (4) the name and address of the petitioner.
- (c) The petitioner may include the following information within the request:
- (1) the statutory authority for the agency to promulgate the rules;
 - (2) a statement of the cost factors for persons affected by the proposed rules;
 - (3) a statement explaining the computation of the cost factors;
 - (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rules; and
 - (5) documents and data supporting the proposed rules.
- (e) ~~When petitions and supporting documents and data exceed 10 pages in length, 15 copies of the entire petition and any attachments shall be submitted.~~
- (d) In its review of the proposed rules, the Commission shall consider:
- (1) whether it has the authority to adopt the rules;
 - (2) the effect of the proposed rules on existing rules, programs, and practices;
 - (3) probable costs and cost factors of the proposed rules; and
 - (4) the impact of the rules on the public and regulated entities.
- (d)(e) ~~Petitions~~ A petition failing to contain the required information shall be returned by the Marine Fisheries Commission ~~Chairman.~~ Chair.

Authority G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20.

15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE COMMISSION

(a) The Marine Fisheries Commission ~~Chairman~~ Chair may refer ~~duly submitted petitions~~ complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory ~~committee(s)~~ committees or other advisory ~~committee(s)~~ committees of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) ~~The Chairman~~ Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the ~~petition within 10 days of the assignment of the petition.~~

(c) At least 15 days before the Committee meeting, the Committee ~~Chairman~~ Chair shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) ~~The~~ If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Fisheries Director, ~~through~~ Division of Marine Fisheries staff, or their legal counsel may make a presentation to the Committee.

(e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations before the Committee.

~~(e)(f) Interested~~ At least 10 days before the Committee meeting, interested persons must shall request the opportunity to make a presentation to the ~~Committee(s)~~ Committees through the ~~Committee(s) chair(s).~~ Chairs of the Committees. The request shall:

- (1) state the interest of the ~~person,~~ person;
- (2) state the ~~person=s~~ person's position on the petition for ~~rulemaking,~~ rulemaking; and
- (3) be accompanied by supporting materials.

~~The Chairman of the Committee will determine whether additional interested persons make oral presentations before the Committee.~~

~~(f) The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee before it makes a recommendation on the petition for rulemaking.~~

(g) During the ~~Committee=s~~ Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20.

15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION

(a) ~~Petitions~~ A complete petition for rulemaking, ~~when deemed complete by the Marine Fisheries Commission Chairman,~~ as set

forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.

(b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition and the Committee's recommended action shall be presented through the Chair of the Committee or other designated member of the Committee during the business session of the Commission. Unless the Commission Chair rules otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the Department of Environmental Quality, the petitioner, and the petitioner's legal counsel.

(c) For a petition not referred to a Committee, the Commission Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Commission Chair may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Commission Chair. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

~~(b)(d)~~ Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission shall:

- (1) grant the petition in writing, notify the petitioner in writing, and initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; 150B-20; or
- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) person or persons who submitted the petition.

Authority G.S. 113-134; 113-182; ~~143B-289.51~~; 143B-289.52; 150B-20.

15A NCAC 03P .0304 RECURSE TO DENIAL OF THE PETITION

~~If the Marine Fisheries Commission denies the petition for rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4 of Chapter 150B of the General Statutes.~~

Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0110 CRAB SPAWNING SANCTUARIES

~~The crab spawning sanctuaries within which the taking of crabs may be restricted or prohibited are described as follows:~~

referenced in 15A NCAC 03L .0205 are delineated in the following coastal fishing waters:

(1) in Areas from Barden Inlet and North:

~~(1)(a) In in the Oregon Inlet Area. Beginning Area: beginning~~ at a point on the Atlantic Ocean shore of Bodie Island 35° 47.7054' N - 75° 32.3522' W; running northeasterly to a point in the Atlantic Ocean 35° 47.9833' N - 75° 31.8500' W; running southerly to a point in the ocean 35° 46.3500' N - 75° 30.6666' W; running westerly to a point on the Atlantic Ocean shore at 35° 46.1037' N - 75° 31.2785' W; running northerly along the Atlantic shore of Pea Island to and around South Point and continuing southerly along the shore of Pamlico Sound to a point on the south point of Eagle Nest Bay at 35° 43.7085' N - 75° 30.8009' W; running westerly to a point in Pamlico Sound at 35° 43.7100' N - 75° 32.2113' W; running northerly to a point 35° 47.3992' N - 75° 34.1650' W in Pamlico Sound; running northerly to a point on Bodie Island ~~35° 48.5740' N - 75° 33.8722' W; 35° 48.7740' N - 75° 33.8722' W;~~ running southerly along the shore to and around North Point at Oregon Inlet and then northerly on the Atlantic shore to the point of beginning;

~~(2)(b) In in the Hatteras Inlet Area. Beginning Area: beginning~~ at a point on the Pamlico Sound shoreline of Hatteras Island 35° 12.0846' N - 75° 43.3514' W; running northwesterly to a point in Pamlico Sound 35° 13.6361' N - 75° 45.4451' W; running southwestly to a point near Outer Green Island 35° 11.0794' N - 75° 48.4440' W; running southeasterly to a point on the Pamlico Sound shore of Ocracoke Island 35° 10.7004' N - 75° 47.9094' W; running northeasterly along the shoreline to a point on the northeastern tip of Ocracoke Island 35° 11.2340' N - 75° 46.3051' W; running southeasterly to a point in the Atlantic Ocean at 35° 10.6644' N - 75° 44.5221' W; running northeasterly to a point on the ocean shoreline of Hatteras Island ~~35° 11.7894' N - 75° 43.5946' W; 35° 11.7895' N - 75° 43.5947' W;~~ running southwestly around the tip of Hatteras Island to the point of beginning;

~~(3)(c) In in the Ocracoke Inlet Area. Beginning Area: beginning~~ at a point

on Ocracoke Island 35° 06.2555' N – 75° 59.3722' W; running westerly through Shellcastle Island to a point in Pamlico Sound 35° 05.8599' N – 76° 04.3639' W; running southerly to a point on Portsmouth Island 35° 03.7378' N – 76° 04.7850' W; 35° 03.7379' N – 76° 04.7850' W; running northeasterly along the shore of Pamlico Sound around the western side of Ocracoke Inlet and southwesterly along the shore of the Atlantic Ocean to a point 35° 03.0500' N – 76° 03.0833' W; running southeasterly offshore to a point in the Atlantic Ocean 35° 02.6333' N - 76° 02.7166' W; running northeasterly to a point in the ocean 35° 03.9666' N - 75° 59.3000' W; running northwesterly to a point on the Atlantic shore of Ocracoke Island 35° 04.7402' N – 75° 59.7124' W; running southwesterly along the shore around the eastern side of Ocracoke Inlet and northeasterly along the shore to the point of beginning;

(4)(d) In the Drum Inlet Area. Beginning at a point on the Core Sound shore of Core Banks 34° 52.81101' N – 76° 17.1780' W; running northwesterly to a point in Core Sound 34° 53.7347' N – 76° 18.0439' W; running southwesterly to a point in Core Sound 34° 50.8286' N – 76° 21.2515' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 50.1496' N – 76° 20.3924' W; following the shoreline in a northeasterly direction around the western side of Drum Inlet then along the Atlantic Ocean shoreline to a point on Core Banks 34° 50.0049' N – 76° 20.3741' W; running southeasterly to a point in the Atlantic Ocean 34° 49.4995' N – 76° 19.8407' W; running northeasterly to a point in the Atlantic Ocean 34° 52.2167' N – 76° 16.7476' W; running northwesterly to a point on the ocean shore of Core Banks 34° 52.6147' N – 76° 17.0705' W; running southwesterly toward and around the eastern side of Drum Inlet, then in a northeasterly direction along the Core Sound shore of Core Sound to the point of beginning; Ophelia and Drum Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 51.7718' N - 76° 18.5093' W; running northwesterly to a point in Core Sound

34° 52.3431' N - 76° 19.1661' W; running southwesterly to a point near Marker "27" in Core Sound 34° 50.6411' N - 76° 22.0094' W; running southwesterly to a point in Core Sound 34° 49.0120' N - 76° 23.0288' W; running southeasterly to a point on the Core Sound shore of Core Banks 34° 48.6143' N - 76° 22.3033' W; following the shoreline in a northeasterly direction around the western side of Ophelia Inlet then along the Atlantic Ocean shoreline southwesterly to a point on Core Banks 34° 48.9349' N - 76° 21.4582' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Core Banks 34° 51.6790' N - 76° 18.3829' W; running southwesterly along the Atlantic Ocean shoreline toward and around the eastern side of Ophelia Inlet, then northeasterly along the Core Sound shore of Core Banks to the point of beginning; and

(5)(c) In the Bardens Inlet Area. Beginning at a point on Core Banks near the southern side of Hogpen Bay 34° 40.7047' N – 76° 29.6108' W; running westerly to a point near Marker "35" at 34° 40.7071' N – 76° 31.5922' W; running southwesterly to a point on Shackleford Banks 34° 38.9974' N – 76° 32.4858' W; running southeasterly around the eastern end of Shackleford Banks and then northwesterly along the ocean shoreline to a point on shore 34° 38.5608' N – 76° 32.6863' W; running southwesterly through Buoy "4" to Buoy "2" at the end of the Cape Lookout Jetty 34° 37.1272' N – 76° 33.7381' W; running southeasterly to the base of the Cape Lookout Jetty 34° 36.7836' N – 76° 33.1569' W; running northerly to the end of Power Squadron Spit, around Lookout Bight and northerly up Core Banks to the point of beginning; Barden Inlet Area: beginning at a point on the Core Sound shore of Core Banks 34° 40.7131' N – 76° 28.9495' W; running northwesterly to a point on Harkers Island 34° 41.0674' N – 76° 31.5834' W; running southwesterly to a point on Shackleford Banks 34° 39.5418' N -

76° 34.0451' W; following the shoreline in southeasterly direction around the northern side of Barden Inlet then along the Atlantic Ocean shoreline northwesterly to a point on Shackleford Banks 34° 38.7748' N - 76° 32.8463' W; running southwesterly to a point in the Atlantic Ocean 34° 38.2938' N - 76° 33.5130' W; running southerly to a point near Buoy "2" at the end of the Cape Lookout Jetty in the Atlantic Ocean 34° 37.1253' N - 76° 33.7446' W; running southeasterly to a point on Cape Lookout 34° 36.7229' N - 76° 33.0514' W; running northerly along the Atlantic Ocean shoreline toward and around the southern side of Barden Inlet to a point on Cape Lookout 34° 36.5492' N - 76° 32.2416' W, then running northeasterly along the Core Sound shore of Core Banks to the point of beginning.

(2) in Areas from Beaufort Inlet and West and South:

(a) Beaufort Inlet Area: beginning at a point on the Back Sound side of Shackleford Banks 34° 41.0017' N - 76° 37.7538' W; running northerly to a point on Carrot Island 34° 42.3553' N - 76° 37.1124' W; running westerly along the shoreline to a point on Carrot Island 34° 42.6291' N - 76° 38.6608' W; running westerly to a point on Town Marsh 34° 42.6394' N - 76° 38.7442' W; running westerly along the shoreline to a point on Town Marsh 34° 42.7915' N - 76° 40.2489' W; running westerly to a point on Bird Shoal 34° 42.7694' N - 76° 40.4764' W; running northerly to a point on Pivers Island 34° 42.9294' N - 76° 40.4301' W; running northerly along the shoreline to a point on Pivers Island 34° 43.1892' N - 76° 40.3873' W; running northerly to a point on Radio Island 34° 43.2344' N - 76° 40.4099' W; running along the shoreline to a point on Radio Island 34° 43.2770' N - 76° 41.2422' W; running along the south side of the Highway 70 Bridge over the Newport River to a point near the Morehead City Port 34° 43.2419' N - 76° 41.7067' W; running southerly along the shore to a point near the Morehead City Port 34° 42.9560' N - 76° 41.6986' W; running southwesterly to a point on Goat Island 34° 42.7185' N - 76°

41.9145' W; running southeasterly along the shoreline to a point on Goat Island 34° 42.2031' N - 76° 41.3923' W; running southwesterly to a point on shore near Fort Macon State Park 34° 42.1709' N - 76° 41.3693' W; following the shoreline in a southwesterly direction around the western shoreline of Beaufort Inlet then along the Atlantic Ocean shoreline to a point on Bogue Banks 34° 41.6480' N - 76° 42.0986' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly then southeasterly and returning to shore parallel to a point on Shackleford Banks 34° 40.6129' N - 76° 38.1521' W; running northwesterly along the Atlantic Ocean shoreline around the eastern side of Beaufort Inlet, then running easterly along the Back Sound shore of Shackleford Banks to the point of beginning;

(b) Bogue Inlet Area: beginning at a point on Bogue Banks 34° 39.1828' N - 77° 05.8503' W; running northerly to a point 34° 40.1526' N - 77° 05.6346' W; running northerly to a point 34° 40.2531' N - 77° 05.6385' W; running westerly to a point 34° 40.2550' N - 77° 05.9450' W; running southerly to a point 34° 40.1732' N - 77° 05.9616' W; running southerly to a point 34° 39.9629' N - 77° 06.1038' W; running southerly to a point 34° 39.5209' N - 77° 06.4042; running southwesterly to a point 34° 39.0599' N - 77° 07.3287' W; running southerly to a point on Bear Island 34° 38.3856' N - 77° 07.2373'; following the shoreline in a northeasterly direction around the western shoreline of Bogue Inlet then along the Atlantic Ocean shoreline to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bogue Banks 34° 38.7491' N - 77° 05.2548' W; running southwesterly along the Atlantic Ocean shoreline around the eastern side of Bogue Inlet to a point 34° 38.7686' N - 77° 06.0596' W; running

- northerly to a point 34° 38.9900' N - 77° 06.1269' W, then running northeasterly to the point of beginning;
- (c) Bear Inlet Area: beginning at a point on Bear Island 34° 37.7852' N - 77° 09.7128' W; running northerly to a point 34° 37.8817' N - 77° 09.7698' W; running southwesterly to a point 34° 37.6695' N - 77° 10.4134' W; running northwesterly to a point 34° 37.8105' N - 77° 10.5849' W; running southwesterly to a point on Saunders Island 34° 37.4531' N - 77° 11.0624' W; running southeasterly to a point on Browns Island 34° 37.2216' N - 77° 10.8461' W; following the shoreline in northeasterly direction around the western shoreline of Bear Inlet then along the Atlantic Ocean shoreline to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Bear Island 34° 37.5607' N - 77° 09.5752' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Bear Inlet, then northeasterly along the shore to the point of beginning;
- (d) Browns Inlet Area: beginning at a point on Browns Island 34° 35.8978' N - 77° 13.8409' W; running northwesterly to a point 34° 36.0015' N - 77° 13.9606' W; running westerly to a point 34° 35.9360' N - 77° 14.1340' W; running southerly to a point 34° 35.6631' N - 77° 14.1270' W; following the shoreline in a northeasterly direction around the western shoreline of Browns Inlet then along the Atlantic Ocean shoreline to a point 34° 33.7692' N - 77° 16.8043' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Browns Island 34° 36.1188' N - 77° 13.0193' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of Browns Inlet, then northerly along the shore to the point of beginning;
- (e) New River Inlet Area: beginning at a point on shore on the south side of Wards Channel 34° 32.2064' N - 77° 19.8404' W; running northwesterly to a point 34° 33.1386' N - 77° 20.8902' W; running westerly to a point 34° 33.1097' N - 77° 21.1013' W; running southeasterly to a point 34° 32.3473' N - 77° 20.6013' W; running southwesterly to a point on Topsail Island 34° 32.1096' N - 77° 20.8447' W; following the shore line in a southerly direction around the western shoreline of New River Inlet then along the Atlantic Ocean shoreline to a point 34° 31.3352' N - 77° 21.1694' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point 34° 33.7692' N - 77° 16.8043' W; running southwesterly along the Atlantic Ocean shoreline around the eastern shoreline of New River Inlet, then northeasterly along the shore to the point of beginning;
- (f) Topsail Inlet Area: beginning at a point on Topsail Island 34° 21.9619' N - 77° 37.8381' W; running northwesterly to a point in Topsail Sound 34° 22.1071' N - 77° 37.9944' W; running southwesterly to a point near Marker "5" 34° 21.7185' N - 77° 38.3499' W; running southwesterly to a point near Marker "3" 34° 21.5798' N - 77° 38.5928' W; running southwesterly to a point near Marker "1" 34° 21.1055' N - 77° 39.1749' W; running northwesterly to a point 34° 21.2065' N - 77° 39.6127' W; running southwesterly to a point 34° 20.7450' N - 77° 40.3682' W; running southerly to a point 34° 20.3011' N - 77° 40.3728' W; following the shoreline in a northeasterly direction around the western shoreline of Topsail Inlet then along the Atlantic Ocean shoreline to a point on Lea-Hutaff Island 34° 20.0228' N - 77° 40.4332' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Topsail Island 34° 20.8762' N - 77° 38.9403' W; running southwesterly along the

- Atlantic Ocean shoreline around the eastern shore of Topsail Inlet, then northeasterly along the Topsail Sound shore of Topsail Island to the point of beginning;
- (g) Rich Inlet Area: beginning at a point on Lea-Hutaff Island 34° 18.1292' N - 77° 42.6492' W; running northwesterly to a point 34° 18.2851' N - 77° 42.9352' W; running southwesterly to a point 34° 18.0190' N - 77° 43.2798' W; running southerly to a point on Figure Eight Island 34° 17.5649' N - 77° 43.1649' W; following the shoreline in an easterly direction around the southern shoreline of Rich Inlet then along the Atlantic Ocean shoreline to a point on Figure Eight Island 34° 17.2243' N - 77° 43.2491' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Lea-Hutaff Island 34° 18.1251' N - 77° 42.4352' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Rich Inlet, then northeasterly along the shore to the point of beginning;
- (h) Mason Inlet Area: beginning at a point on Figure Eight Island 34° 14.9536' N - 77° 45.9567' W; running northwesterly to a point 34° 15.0409' N - 77° 46.1766' W; running southwesterly to a point 34° 14.8657' N - 77° 46.4044' W; running southwesterly to a point 34° 14.7256' N - 77° 46.5348' W; running southerly to a point on Shell Island 34° 14.2036' N - 77° 46.5189' W; following the shoreline in a northeasterly direction around the southern shoreline of Mason Inlet then along the Atlantic Ocean shoreline to a point on Shell Island 34° 14.1375' N - 77° 46.4263' W; extending 100 yards seaward from the shoreline from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Figure Eight Island 34° 14.8474' N - 77° 45.7857' W; running southwesterly along the Atlantic Ocean shoreline around the northern shoreline of Mason Inlet, then
- northeasterly along the shore to the point of beginning;
- (i) Masonboro Inlet Area: beginning at a point on Wrightsville Beach 34° 11.3446' N - 77° 48.7458' W; running northwesterly to a point 34° 11.4604' N - 77° 49.0510' W; running northwesterly to a point 34° 11.5164' N - 77° 49.2368' W; running northwesterly to a point 34° 11.5255' N - 77° 49.2652' W; running northwesterly to a point 34° 11.5700' N - 77° 49.4425' W; running southwesterly to a point 34° 11.3553' N - 77° 49.5924' W; running easterly to a point 34° 11.3737' N - 77° 49.4628' W; running easterly to a point 34° 11.3737' N - 77° 49.4345' W; following the shoreline southeasterly to a point 34° 11.2551' N - 77° 49.2287' W; running southerly to a point on Masonboro Island 34° 10.8451' N - 77° 49.0242' W; following the shoreline in an easterly direction around the southern shoreline of Masonboro Inlet through a point at the base of the jetty 34° 10.8814' N - 77° 48.7074' W; running southwesterly along the Atlantic Ocean shoreline to a point on Masonboro Island 34° 10.5221' N - 77° 49.1658' W; extending 100 yards seaward from the shoreline and the Atlantic Ocean side of the jetties from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and returning to shore parallel to a point 34° 11.5753' N - 77° 48.3061' W; running southwesterly along the Atlantic Ocean shoreline through a point at the base of the jetty 34° 11.2076' N - 77° 48.5555' W; around the northern shoreline of Masonboro Inlet then northeasterly along the shore to the point of beginning;
- (j) Carolina Beach Inlet Area: beginning at a point on Masonboro Island 34° 04.8168' N - 77° 52.8796' W; running southerly to a point 34° 04.4997' N - 77° 53.0080' W; following the shoreline in an easterly direction to a point 34° 04.5022' N - 77° 52.7982' W; running easterly to a point on Pleasure Island 34° 04.5102' N - 77° 52.7340' W; following the shoreline in an easterly direction around the southern shoreline of Carolina Beach Inlet then along the Atlantic Ocean shoreline to

a point on Pleasure Island 34° 04.3505' N - 77° 52.5048' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Masonboro Island 34° 05.2151' N - 77° 52.1472' W; running southeasterly along the Atlantic Ocean shoreline around the northern shoreline of Carolina Beach Inlet, then westerly along the shore to the point of beginning;

(k) Cape Fear River Inlet Area: beginning at a point on Bald Head Island 33° 52.7072' N - 78° 00.0449' W; running northeasterly to a point 33° 53.6135' N - 77° 59.2549' W; running northerly to a point 33° 54.4086' N - 77° 59.0330' W; running northerly to a point 33° 54.8399' N - 77° 58.9115' W; running westerly to a point at Southport 33° 54.9503' N - 78° 01.3581' W; running southerly to a point on Fort Caswell 33° 53.7948' N - 78° 01.0782' W; following the shoreline in a southerly direction around the western shoreline of Cape Fear River Inlet then westerly along the Atlantic Ocean shoreline to a point on Caswell Beach 33° 53.4293' N - 78° 01.7604' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running southerly to point near Buoy "12" 33° 51.8213' N - 78° 01.0179' W; running southeasterly to a point 33° 51.1999' N - 78° 00.0632' W; running northeasterly to a point on Bald Head Island 33° 51.3488' N - 77° 59.9222' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Cape Fear River Inlet, then northeasterly along the shore to the point of beginning;

(l) Lockwoods Folly Inlet Area: beginning at a point on Oak Island 33° 54.9392' N - 78° 13.6711' W; running northerly to a point on Sheep Island 33° 55.0837' N - 78° 13.6753' W; following the shoreline northwesterly to a point on Sheep Island 33° 55.2263' N - 78° 13.9395' W; running westerly to a point on Holden Beach 33° 55.1794' N - 78° 14.3132' W; following the shoreline in a southwesterly direction around the western shore of Lockwoods Folly

Inlet then along the Atlantic Ocean shoreline to a point on Holden Beach 33° 54.8695' N - 78° 14.6180' W; running southerly to a point in the Atlantic Ocean 33° 54.6076' N - 78° 14.6026' W; running easterly to a point in the Atlantic Ocean 33° 54.5564' N - 78° 14.0529' W; running northerly to a point on Oak Island 33° 54.8853' N - 78° 14.0041' W; running northwesterly along the Atlantic Ocean shoreline around the eastern shore of Lockwoods Folly Inlet, then easterly along the shore to the point of beginning;

(m) Shallotte Inlet Area: beginning at a point near Monks Island 33° 54.5773' N - 78° 22.8077' W; running southwesterly to a point on Ocean Isle Beach 33° 54.2436' N - 78° 23.2758' W; following the shoreline in a southerly direction around the western shore of Shallotte Inlet then along the Atlantic Ocean shoreline to a point on Ocean Isle Beach 33° 53.8151' N - 78° 23.7753' W; extending 100 yards seaward from the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running easterly and returning to shore parallel to a point on Big Beach 33° 54.1103' N - 78° 21.9540' W; running westerly along the Atlantic Ocean shoreline around the eastern shore of Shallotte Inlet, then northerly along the shore to the point of beginning; and

(n) Tubbs Inlet Area: beginning at a point on the Jinks Creek shore of Ocean Isle Beach 33° 52.5844' N - 78° 28.6583' W; running northerly to a point 33° 52.7734' N - 78° 28.7428' W; running southwesterly to a point 33° 52.6815' N - 78° 29.0080' W; running southwesterly to a point on the Eastern Channel shore of Sunset Beach 33° 52.3878' N - 78° 29.1301' W; following the shoreline in an easterly direction around the western shore of Tubbs Inlet then along the Atlantic Ocean shoreline to a point on Sunset Beach 33° 52.3250' N - 78° 29.1865' W; extending 100 yards seaward of the mean high water line and the COLREG Demarcation Line in the Atlantic Ocean and running northeasterly and returning to shore parallel to a point on Ocean Isle Beach 33° 52.5676' N - 78° 28.4027' W; running southwesterly along the

Atlantic Ocean shoreline around the eastern shore of Tubbs Inlet then in a northerly direction along the shore to the point of beginning.

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

15A NCAC 03R .0111 PURSE SEINES PROHIBITED

The areas referenced in 15A NCAC 03J .0105(b)(1) are delineated in the following coastal fishing waters of the Atlantic Ocean:

(a)(1) ~~It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the~~ Atlantic Ocean within an area bounded by a line extending from a point near the Bald Head Lighthouse (33° 52.3500' N - 78° 00.3000' W) 33° 52.3500' N - 78° 00.3000' W; running southwesterly to a point near the Cape Fear River ship channel buoy "9" (33° 51.5500' N - 78° 01.5500' W); then 33° 51.5500' N - 78° 01.5500' W; running northwesterly to a point near the foot of the Yaupon Beach Fishing Pier on Oak Island (33° 54.2000' N - 78° 04.9333' W); then 33° 54.2000' N - 78° 04.9333' W; following the shoreline easterly to a point near Fort Caswell (33° 53.2166' N - 78° 01.1833' W); then 33° 53.2166' N - 78° 01.1833' W; running southeasterly back to the point of origin; beginning;

(b)(2) ~~It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from in the~~ Atlantic Ocean from May 1 through September 30:

(1)(a) ~~In that in the~~ area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 1.5 nautical miles to a point offshore 36° 13.8536' N - 75° 44.3814' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2225' W; running westerly to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 42.2416' W; and

(2)(b) ~~In that in the~~ area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 1.5 nautical miles to a point offshore 36° 03.3187' N - 75° 38.8029' W; running southerly parallel to and 1.5 nautical miles from the ocean beach to a point 1.5 nautical miles offshore of the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 29.2379' W; running westerly to a point onshore at

the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W; W; and

(e)(3) ~~It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the in the~~ Atlantic Ocean from October 1 through December 31:

(1)(a) ~~In that in the~~ area bounded by a line beginning at a point onshore at the northern boundary of Dare County 36° 13.8536' N - 75° 46.3914' W; running easterly 0.5 nautical miles to a point offshore 36° 13.8536' N - 75° 45.6977' W; running southerly parallel to and 0.5 nautical miles off the ocean beach to a point 0.5 nautical miles offshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 43.5514' W; running westerly 0.5 nautical miles to a point onshore at the northern town limits of Southern Shores 36° 09.0673' N - 75° 44.2416' W; and

(2)(b) ~~In that in the~~ area bounded by a line beginning at a point at the southern limits of Kitty Hawk 36° 03.3187' N - 75° 40.9503' W; running easterly 0.5 nautical miles to a point offshore 36° 03.3187' N - 75° 40.2033' W; running southerly parallel to and 0.5 nautical mile miles off the ocean beach to a point offshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 30.6134' W; running westerly to a point onshore at the rock jetty south of Oregon Inlet 35° 46.4052' N - 75° 31.5369' W.

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

15A NCAC 03R .0118 EXEMPTED CRAB POT ESCAPE RING AREAS CRAB HARVEST MANAGEMENT AREAS

The areas referenced in 15A NCAC 03J .0301(g) 03L .0201(a) and (b) are delineated in the following coastal fishing waters:

(1) ~~Pamlico Sound within the area described by a line beginning at a point 35° 43.7457' N - 75° 30.7014' W on the south shore of Eagles Nest Bay on Pea Island; running westerly to a point 35° 42.9500' N - 75° 34.1500' W; running southerly to a point 35° 39.3500' N - 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N - 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N - 75° 31.5825' W on Gull Island; running southwesterly to a point 35° 22.8671' N - 75° 33.5851' W in Avon Channel near Beacon "1AV"; running southwesterly to a point 35° 18.9603' N - 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point~~

35° 16.7588' N 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35° 14.0337' N 75° 45.9643' W southwest of Oliver Reef near the quick flashing beacon; running westerly to a point 35° 09.3650' N 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35° 08.4523' N 76° 02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35° 07.1000' N 76° 06.9000' W; running southwesterly to a point 35° 01.4985' N 76° 11.4353' W near Beacon "HL"; running southwesterly to a point 35° 00.2728' N 76° 12.1903' W near Beacon "1CS"; running southerly to a point 34° 59.5027' N 76° 12.3204' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running southwesterly to a point 34° 59.3610' N 76° 12.6040' W on Wainwright Island; running easterly to a point at 34° 58.7853' N 76° 09.8922' W on Core Banks; running easterly and northerly along the shoreline across the inlets following the COLREGS Demarcation line up the Outer Banks to the point of beginning. Northern Region: All Coastal Fishing Waters of the state north and east of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/Virginia state line.

- (2) Newport River, from April 1 through June 15 – within the area described by a line beginning at a point 34° 49.5080' N 76° 41.4440' W; running westerly along the south side of the Highway 101 Bridge over Core Creek to a point on the west shore 34° 49.5260' N 76° 41.5130' W; running along the shoreline of Newport River and its tributaries to a point 34° 49.3050' N 76° 44.2350' W; running westerly along the south side of the Highway 101 Bridge over Harlowe Canal to a point on the west shore 34° 49.2980' N 76° 44.2610' W; running along the shoreline of Newport River and its tributaries to a point 34° 45.2478' N 76° 46.4479' W; running southerly along the Inland Coastal Waters boundary line to a point 34° 45.1840' N 76° 46.4488' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.2520' N 76° 41.6840' W; running easterly along the north side of the Highway 70 Bridge over Newport River to a point 34° 43.2840' N 76° 41.2200' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.3530' N 76° 40.2080' W; running easterly across Gallant Channel to a point 34° 43.3521' N 76° 40.0871' W; running along the shoreline of Newport River and its tributaries back to the point of beginning.

Southern Region: All Coastal Fishing Waters of the State south and west of a line extending southeast from the Highway 58 Bridge to a point offshore at 34° 36.3292' N - 77° 02.5940' W to the North Carolina/South Carolina state line.

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

15A NCAC 03R .0119 OCEAN ARTIFICIAL REEFS

The Ocean Artificial Reefs referenced in 15A NCAC 03J .0404 are delineated in the following Coastal Fishing Waters of the Atlantic Ocean:

- (1) AR-160: within the circular area described by a center point at 35° 43.8880' N - 75° 26.7710' W and radius extending 1,500 feet.
- (2) AR-165: within the circular area described by a center point at 35° 41.6720' N - 75° 26.3130' W and radius extending 1,500 feet.
- (3) AR-275: within the circular area described by a center point at 34° 50.0930' N - 76° 16.8800' W and radius extending 1,500 feet.
- (4) AR-315: within the circular area described by a center point at 34° 40.0850' N - 76° 44.8270' W and radius extending 3,000 feet.
- (5) AR-320: within the circular area described by a center point at 34° 39.5330' N - 76° 48.4170' W and radius extending 1,500 feet.
- (6) AR-342: within the circular area described by a center point at 34° 36.6720' N - 77° 2.1890' W and radius extending 1,500 feet.
- (7) AR-360: within the circular area described by a center point at 34° 20.9830' N - 77° 36.1830' W and radius extending 1,500 feet.
- (8) AR-364: within the circular area described by a center point at 34° 14.8060' N - 77° 42.8550' W and radius extending 1,500 feet.
- (9) AR-370: within the circular area described by a center point at 34° 10.4530' N - 77° 45.2810' W and radius extending 3,000 feet.
- (10) AR-378: within the circular area described by a center point at 34° 1.8070' N - 77° 52.0910' W and radius extending 1,500 feet.
- (11) AR-378b: within the circular area described by a center point at 34° 0.6420' N - 77° 50.6540' W and radius extending 1,500 feet.
- (12) AR-425: within the circular area described by a center point at 33° 53.0480' N - 78° 6.5250' W and radius extending 1,500 feet.
- (13) AR-430: within the circular area described by a center point at 33° 52.2560' N - 78° 09.9680' W and radius extending 1,500 feet.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0100 – HANDLING, PACKING, AND SHIPPING OF CRUSTACEA MEAT

15A NCAC 18A .0135 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate a processing facility without a permit issued by the Division; first obtaining a Crustacea Permit and Certificate of Compliance from the Division of Marine Fisheries.
- (b) ~~No person shall operate a repacker facility without a repacker permit issued by the Division.~~
- (c) ~~(b)~~ Application for a permit shall be submitted in writing ~~on an application form available from~~ to the Division. Application forms may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (d) ~~(c)~~ No permit shall be issued by the Division until an inspection by the Division shows that the facility and equipment comply with applicable rules of this Section. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (e) ~~A permit issued to one person is not transferrable to another person.~~
- (f) ~~(d)~~ The permit shall be posted in a conspicuous place in the facility. ~~All permits shall expire on March 31 of each year.~~
- (g) ~~(e)~~ All permits shall expire on March 31 of each year and are non-transferrable.
- (h) ~~(f)~~ Plans and specifications for proposed new construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction. construction or making a change.
- (i) ~~(g)~~ A permit may be revoked or suspended pursuant to G.S. 130A-23; in accordance with 15A NCAC 030 .0504.
- (j) ~~(h)~~ The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

SECTION .0300 – SANITATION OF SHELLFISH - GENERAL

15A NCAC 18A .0302 PERMITS

- (a) ~~No person shall~~ It shall be unlawful to operate any of the following facilities without a permit issued by the Division; first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division of Marine Fisheries:
- (1) ~~Depuration~~ depuration facilities;
 - (2) repacking plants;
 - (3) ~~(3)~~ Shellstock shellstock plants; and
 - (4) ~~(4)~~ Shucking shucking and packing plants; plants.
- (b) ~~No person shall~~ It shall be unlawful to operate as a shellstock dealer without a permit issued by the Division; first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division.
- (c) ~~A permit may be issued to a reshipper when required for out of state shipment.~~ It shall be unlawful to operate as a reshipper

without first obtaining a Shellfish Dealer Permit and Certificate of Compliance from the Division if shellfish are purchased and shipped out of state.

- (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.
- (e) Application for a permit shall be submitted in writing to the Division ~~at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina, 28557.~~ Division. Application forms are available may be obtained from the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557.
- (f) No permit shall be issued by the Division until an inspection by the Division shows that the facilities ~~facility~~ and equipment comply with all applicable rules Rules in Sections .0300 through .0800 of this Subchapter. The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.
- (g) All permits shall be posted in a conspicuous place in the facilities. ~~All permits shall expire on April 30 of each year.~~ facility.
- (h) ~~All permits shall expire on April 30 of each year and are non-transferrable.~~
- (i) ~~(h)~~ Plans and specifications for proposed new construction or remodeling construction, expansion of operations, or changes in operating processes shall be submitted to the Division for review and approval. approval prior to beginning construction or making a change.
- (j) ~~(i)~~ A permit may be revoked or suspended pursuant to G.S. 130A-23; in accordance with 15A NCAC 030 .0504.

Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.

15A NCAC 18A .0303 RELAYING PERMITS

~~If a person is granted a relaying permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for conditioning and purification prior to marketing and marketed after relaying in a large body of clean water, but only under the following conditions:~~

- (1) ~~Application for relaying must be received by the North Carolina Division of Marine Fisheries and the Division 15 days prior to relaying.~~
- (2) ~~Removal and relaying shall be under the supervision of the Division and the Division of Marine Fisheries.~~
- (3) ~~Shellfish relayed from a prohibited area to a designated area of approved water shall remain down for a period of not less than fourteen days when the water in which shellfish are relayed has a temperature above 50°F (10°C). When the water temperature is below 50°F (10°C), shellfish shall not be relayed.~~

Authority G.S. 130A-230.

15A NCAC 18A .0304 DEPURATION HARVESTING PERMITS

If a person is granted a depuration harvesting permit by the Division and the Division of Marine Fisheries, shellfish may be removed from certain designated prohibited areas for depuration prior to marketing and marketed after depuration in a permitted facility, but only under the following conditions:

- (1) Application for a depuration harvesting permit must be received by the Division of Marine Fisheries and the Division 15 days prior to harvesting for depuration purposes.
- (2) Harvesting for depuration purposes shall be under the supervision of the Division and the Division of Marine Fisheries.

Authority G.S. 130A-230.

SECTION .0400 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

15A NCAC 18A .0425 TAGGING DEALER TAGS

(a) ~~In order that information may be available to the Division with reference to the origin of shellstock, Consistent with the rules of this Section, it shall be unlawful to possess containers holding shellstock shall be identified with~~ without a uniform dealer tag or label affixed after the shellstock is processed or shipped by the initial certified shellfish dealer. The tag shall be durable, ~~waterproof~~ waterproof, and measure at least 2 5/8 by 5 1/4 inches (6.7 by 13.3 centimeters). ~~a minimum of two and five-eighths inches by five and one-fourth inches in size. The~~ It shall be unlawful for the tag ~~shall to fail to~~ contain legible information arranged in the specific order as follows:

- (1) the dealer's name, ~~address~~ address, and certification number assigned by the appropriate shellfish control agency;
- (2) the original shipper's certification number;
- (3) the harvest ~~date~~; date, or if depurated, the date of depuration processing, or if wet stored, the original harvest date, and the final harvest date, which is the date removed from wet storage;
- (4) if wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";
- (4)(5) ~~the harvest location, including the country or state abbreviation; the most precise identification of the harvest location as is practicable, including the initials of the state of harvest, and the state or local shellfish control authority's designation of the growing area by indexing, administrative, or geographic designation. If the authority in another state has not indexed growing areas, then a geographical or administrative designation shall be used (e.g., Long Bay, shellfish lease or franchise number, or lot number);~~
- (5) ~~when the shellstock has been in wet storage, the statement "THIS PRODUCT WAS IN WET STORAGE AT (FACILITY~~

CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";

- (6) the type and quantity of shellfish; shellstock;
- (7) the following statement shall appear statements in bold bold, capitalized type font:

(A) "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON ~~FILE~~ FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS;" DAYS."; and
(B) "RETAILERS; DATE WHEN LAST SHELLFISH FROM THIS CONTAINER SOLD OR SERVED (INSERT DATE) .";

- (8) the following statement, or equivalent, equivalent:

"Consumer Advisory

Eating raw oysters, ~~clams~~ clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat raw shellfish and become sick, see a doctor ~~immediately.~~ immediately."; and

- (9) the following statement, or equivalent: "Keep Refrigerated".

(b) The ~~uniform~~ dealer tag or label shall remain attached to the shellstock container until the container is empty and thereafter shall be kept on ~~file~~ file, in chronological order, for 90 days.

(c) ~~All shellstock from a depuration facility must be identified as having been cleansed by a depuration facility identified by a name and permit number on the tag.~~

Authority G.S. ~~130A-230; 113-134; 113-182; 113-221.2; 143B-289.52.~~

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0912 SHELLFISH MANAGEMENT AREAS

~~When the Division of Marine Fisheries begins operations to relocate shellfish from a restricted or conditionally approved area to an approved area, the Division will recommend to the Division of Marine Fisheries that the area of relocation be closed until cleansing requirements for relayed shellfish have been satisfied.~~

Authority G.S. 130A-230.

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 10H .1601.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncwildlife.org/Proposed-Regulations>

Proposed Effective Date: February 1, 2022

Public Hearing:

Date: October 26, 2021

Time: 6:00 p.m.

Location: Register online here: https://ncwildlife.org.zoomgov.com/webinar/register/WN_EdQcrvP4Qy-8IxLAnJB3Pg Join by phone toll free (833-568-8864) using Webinar ID: 161 945 1736

Reason for Proposed Action: G.S. 113-273(g) Controlled Hunting Preserve Operator License allows for the hunting of rabbits with dogs in enclosed areas. The proposed rule sets standards for the licensing and operation of controlled rabbit hunting preserves. This rule establishes definitions, details controlled hunting preserve operator licenses applicant requirements, license requirements, and reporting, and record-keeping requirements.

Comments may be submitted to: Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org

Comment period ends: November 30, 2021

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10H – REGULATED ACTIVITIES

SECTION .1000 - TAXIDERMY

15A NCAC 10H .1601 CONTROLLED RABBIT HUNTING PRESERVES

(a) For the purposes of this Rule, a controlled rabbit hunting preserve, or preserve, shall mean an area of any size that is completely and permanently enclosed with a fence designed to prevent the escape or entry of wild rabbits at any time, where wild rabbits are pursued with dogs.

(b) For the purpose of this Rule, "wild rabbits" means eastern cottontail (*Sylvilagus floridanus*), Appalachian cottontail (*Sylvilagus obscurus*), marsh rabbits (*Sylvilagus palustris*), and species indistinguishable from these species.

(c) The following conditions shall apply to the take of wild rabbits on controlled rabbit hunting preserves:

- (1) take of wild rabbits shall be authorized year-round;
- (2) dogs shall be the only authorized manner of take;
- (3) unless otherwise exempt from license requirements, every person participating in the pursuit of rabbits on a controlled rabbit hunting preserve shall have a valid resident or nonresident hunting license or a controlled hunting preserve hunting license in his or her possession, in accordance with 15A NCAC 10B .0114.

(d) Any individual wanting to operate a controlled rabbit hunting preserve shall first obtain a controlled rabbit hunting preserve operator license from the Commission.

(e) One controlled hunting preserve operator license is required for each enclosure, except that one license is permitted for the same operator on properties not greater than 100 acres of contiguous acres of land regardless of the number of enclosures.

(f) Applicants for a controlled hunting preserve operator license shall show proof of ownership or lease of the land contained in the proposed controlled rabbit hunting preserve.

(g) Application for a controlled rabbit hunting preserve operator license shall be made online at www.ncwildlife.org or at the Commission headquarters located at 1751 Varsity Drive, Raleigh, NC 27606-2576. Information required from the applicant shall include:

- (1) the applicant's name, address, telephone number, date of birth; and
- (2) the preserve name, address, county, acreage, and number of enclosures.

(h) License holders shall keep an accurate record of all rabbits released into or removed from the preserve on a form provided by the Commission. Records shall contain the following information:

- (1) the number of rabbits released into the preserve;
- (2) the county of origin; and
- (3) name, address, and applicable hunting license number of the individual that provided the rabbits to the preserve.

(i) Records required in Paragraph (h) of this Rule shall be:

- (1) available for inspection by representatives of the Commission upon request; and
- (2) submitted to and received by the Commission annually by May 1.

(j) In accordance with season and bag limits in 15A NCAC 10B .0207, rabbits may be box trapped inside an enclosure and moved

between enclosures with a valid controlled rabbit hunting preserve operator license or valid hunting license.

(k) Controlled hunting preserve operator licenses shall not be transferable, either by transferring the license or by relocating the site of the preserve.

(l) Upon receipt of an application accompanied by the license fee, the Commission shall issue a controlled rabbit hunting preserve operator license, provided the rules in this Section regarding establishment of such areas have been complied with.

(m) Representatives of the Commission shall be permitted to enter the premises of any licensed controlled rabbit hunting preserve upon request or during the preserve's operating hours for inspection, enforcement, or scientific purposes.

Authority G.S. 113-134; 113-273(g); 113-276(k).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber Examiners intends to amend the rules cited as 21 NCAC 06F .0101; 06L .0103 and 06N .0101.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.barbers.nc.gov/news.html>

Proposed Effective Date: February 1, 2022

Public Hearing:

Date: October 20, 2021

Time: 10:00 a.m.

Location: By videoconference at <https://bit.ly/3kJyExw> or by teleconference at (984) 204-1487, conference ID 245 290 443#

Reason for Proposed Action: *The amendments to 21 NCAC 06L .0101 and .0103 would specify where disinfecting solutions and containers must be located in a barbershop.*

The amendment to 21 NCAC 06N .0101 would make renewal fees and late fees nonrefundable.

Comments may be submitted to: Dennis Seavers, 7001 Mail Service Center, Raleigh, NC 27699-7000; phone (919) 814-0641; fax (919) 981-5068; email dennis.seavers@nc.gov

Comment period ends: November 30, 2021

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

SUBCHAPTER 06F – BARBER SCHOOL

SECTION .0100 – BARBER SCHOOL

21 NCAC 06F .0101 PHYSICAL STRUCTURE

(a) For the purpose of this Rule, "practical area" means the area of the school where barbering services are provided.

(b) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of five barber chairs for barber schools within jail or prison facilities or 10 barber chairs for all other schools, and these chairs shall meet the sanitary conditions required by G.S. 86A-15(a)(2);
- (3) have a minimum of 896 square feet in the practical area;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over 10 chairs;
- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin;
- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, such as blackboard space or slide programs;
- (10) have a workstand, with a mounted mirror with minimum dimensions of 36 inches tall and 20 inches wide, for each barber chair in the practical area, constructed of material that can be washed and cleansed;
- (11) have the solutions and containers required by G.S. 86A-15(a)(2)(a) located at the workstand identified in Subparagraph (b)(10) of this Rule;
- ~~(12)~~ have a tool cabinet for each barber chair, with a door to limit exposure of the tools to the open air;

- ~~(12)~~(13) have a towel cabinet, or other method of storage, so that clean towels are stored separate from used towels;
- ~~(13)~~(14) have at least one functional sink or lavatory, with hot and cold water, for each two barber chairs, located within seven unobstructed linear feet of each barber chair. This sink distance requirement does not apply to schools permitted on or before September 1, 2009;
- ~~(14)~~(15) have the school separate from any other place or type of business, except for a business allowed by G.S. 86A-15(a)(1)(b), by a wall of ceiling height;
- ~~(15)~~(16) have a classroom area, separate from the practical area, with desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructors;
- ~~(16)~~(17) have a means for electronic recordation of student hours;
- ~~(17)~~(18) have a sign displayed in each practical area of the school stating that all barbering services are performed by students; and
- ~~(18)~~(19) have a bulletin board hanging in each classroom area with a posting of the rules in this Subchapter and the minimum school curricula as set forth in 21 NCAC 06F .0120.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo structural renovations after that date.

(c) All barber schools seeking a new permit shall receive a satisfactory building inspection by the jurisdiction having authority prior to obtaining a shop inspection pursuant to 21 NCAC 06L .0105.

Authority G.S. 86A-15; 86A-22.

SUBCHAPTER 06L - BARBER SHOPS

21 NCAC 06L .0103 EQUIPMENT

- (a) Each barber shall have a cabinet for barbering equipment. The cabinets shall be constructed of material that may be cleaned.
- (b) Each shop shall have smooth finished walls and floors, with no exposed pipes.
- (c) Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned as required by G.S. 86A-15(a)(2)(c).
- (d) Each shop shall have within the shop or building functioning toilet facilities for employees and patrons.
- (e) Each barber shop shall have a cabinet, or other method of storage, such that clean towels are stored separate from used towels.
- (f) In addition to the requirements of Paragraph (d) of this Rule, barber shops that are permitted on or after January 1, 1995 or undergo structural renovations after that date, shall have within the shop or building a hand-washing sink or lavatory for patrons with hot and cold water, soap, and disposable towels.
- (g) Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the toilet facility and sink may be shared with the cosmetology shop.

(h) Paragraphs (a), (d), and (f) of this Rule do not apply to barber shops operated by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.

(i) All equipment and tools used in the practice of barbering as set forth in G.S. 86A-2 shall be suitable for the safe cutting of hair and shall be maintained in a sanitary and good operating condition as required by G.S. 86A-15(a)(2).

(j) The solutions and containers required by G.S. 86A-15(a)(2)(a) shall be located at the backstand identified in Rule .0102(b) of this Subchapter.

Authority G.S. 86A-2; 86A-15.

SUBCHAPTER 06N – FEES AND FORMS

21 NCAC 06N .0101 FEES, ACCESS TO FORMS, AND RENEWALS

(a) The Board charges the following amounts for the fees authorized by G.S. 86A-25:

- | | | |
|------|---|----------|
| (1) | Certificate of registration or renewal as a barber | \$50.00 |
| (2) | Certificate of registration or renewal as an apprentice barber | \$50.00 |
| (3) | Barbershop permit or renewal | \$50.00 |
| (4) | Examination to become a registered barber | \$85.00 |
| (5) | Examination to become a registered apprentice barber | \$85.00 |
| (6) | Late fee for restoration of an expired barber certificate within first year after expiration | \$35.00 |
| (7) | Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration | \$70.00 |
| (8) | Late fee for restoration of an expired apprentice certificate within the first year after expiration | \$35.00 |
| (9) | Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate | \$45.00 |
| (10) | Late fee for restoration of an expired barber shop certificate | \$45.00 |
| (11) | Examination to become a barber school instructor | \$165.00 |
| (12) | Student permit | \$25.00 |
| (13) | Issuance of any duplicate copy of a license, certificate, or permit | \$10.00 |
| (14) | Barber school permit or renewal | \$130.00 |
| (15) | Late fee for restoration of an expired barber school certificate | \$85.00 |
| (16) | Barber school instructor certificate or renewal | \$85.00 |
| (17) | Late fee for restoration of an expired barber school instructor certificate within first year after expiration | \$45.00 |
| (18) | Late fee for restoration of an expired barber school instructor certificate after first year | |

- after expiration but within three years after expiration \$85.00
- (19) Inspection of newly established barbershop \$120.00
- (20) Inspection of newly established barber school \$220.00
- (21) Issuance of a registered barber or apprentice certificate by certification \$120.00
- (22) Charge for certified copies of public documents \$10.00 for first page, \$0.25 per page thereafter
- (23) Charge for duplication services and material shall be as set forth in 26 NCAC 01 .0103(a), including any subsequent amendments and editions of the Rule
- (24) Certificate of registration or renewal as a barber for barbers over 70 years of age \$0.00
- (25) Administrative fee under G.S. 86A-27(d) for paying any required fee for renewal or restoration, or a civil penalty and attorney fee, where the apprentice barber or registered barber is subject to a pick-up order issued to an inspector. \$70.00
- (b) Except as set forth in Paragraph (c) of this Rule, if an applicant is unable to attend an examination, he or she may request a refund of the fee. To request the refund, the applicant shall submit a written request to the address listed in 21 NCAC 06A .0102 at least 10 days before the scheduled examination.
- (c) If an applicant submits a request for a refund of examination fees later than 10 days before the scheduled examination, the Board shall consider the request on a case-by-case basis and only grant the request if the applicant demonstrates good cause for not complying with Paragraph (b) of this Rule. For the purpose of this Rule, "good cause" means that the applicant could not have submitted the written request as set forth in Paragraph (b) of this

Rule due to circumstances such as illness, injury, or death in the family.

(d) Renewal and late fees set forth in Paragraph (a) of this Rule are nonrefundable.

~~(d)~~(e) In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue to issue and renew licenses and all fees tendered shall be placed in the escrow account maintained by the Board for this purpose.

~~(e)~~(f) The forms set forth in this Subchapter may be obtained on the website or at the address listed in 21 NCAC 06A .0102.

~~(f)~~(g) All timely renewals of licenses, permits, or certificates of registration shall be submitted online at the Board's website, along with any fees required by this Rule.

~~(g)~~(h) Barber school permits shall be exempt from the online renewal requirement in Paragraph ~~(f)~~(g) of this Rule.

~~(h)~~(i) Registered barbers, apprentice barbers, barber instructors, or barber shops that are unable to comply with the online requirement of Paragraph ~~(f)~~(g) of this Rule may submit the renewal and payment by mail or in person after receiving a waiver from the Board. This waiver shall be effective only for one renewal period. The Board shall issue a waiver within five business days after receiving the following:

- (1) For registered barbers, apprentice barbers, or barber instructors, a statement from the holder of the license, permit, or certificate of registration that the individual is not able to renew online; or
- (2) For barber shops, a statement from the manager or owner that neither the manager nor owner are able to renew online.

Authority G.S. 86A-5; 86A-25; 86A-27(d); 93B-2.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on August 19, 2021 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT****AGRICULTURE, BOARD OF**

<u>Scope</u>	02 NCAC 60B .1001	35:20 NCR
<u>Definitions of Terms</u>	02 NCAC 60B .1002*	35:20 NCR
<u>Permits</u>	02 NCAC 60B .1003	35:20 NCR
<u>Rock or Cliff Climbing and Rappelling</u>	02 NCAC 60B .1004	35:20 NCR
<u>Bathing or Swimming</u>	02 NCAC 60B .1005	35:20 NCR
<u>Hunting</u>	02 NCAC 60B .1006*	35:20 NCR
<u>Fishing</u>	02 NCAC 60B .1007*	35:20 NCR
<u>Animals at Large</u>	02 NCAC 60B .1008*	35:20 NCR
<u>Boating</u>	02 NCAC 60B .1009	35:20 NCR
<u>Camping</u>	02 NCAC 60B .1010	35:20 NCR
<u>Sports and Games</u>	02 NCAC 60B .1011	35:20 NCR
<u>Horses</u>	02 NCAC 60B .1012*	35:20 NCR
<u>Bicycles</u>	02 NCAC 60B .1013	35:20 NCR
<u>Skates, Blades and Boards</u>	02 NCAC 60B .1014	35:20 NCR
<u>Explosives</u>	02 NCAC 60B .1015	35:20 NCR
<u>Fires and Grills</u>	02 NCAC 60B .1017	35:20 NCR
<u>Disorderly Conduct</u>	02 NCAC 60B .1018*	35:20 NCR
<u>Intoxicating Beverages and Drugs</u>	02 NCAC 60B .1019	35:20 NCR
<u>Damage to Buildings, Structures and Signs</u>	02 NCAC 60B .1020	35:20 NCR
<u>Commercial Enterprises</u>	02 NCAC 60B .1021	35:20 NCR
<u>Noise Regulations</u>	02 NCAC 60B .1022*	35:20 NCR
<u>Alms and Contributions</u>	02 NCAC 60B .1024	35:20 NCR
<u>Aviation</u>	02 NCAC 60B .1025	35:20 NCR
<u>Expulsion</u>	02 NCAC 60B .1026	35:20 NCR
<u>Motorized Vehicles</u>	02 NCAC 60B .1027	35:20 NCR
<u>Flowers, Plants, Minerals, Etc</u>	02 NCAC 60B .1028*	35:20 NCR
<u>Trash and Debris</u>	02 NCAC 60B .1029	35:20 NCR
<u>Fees and Charges</u>	02 NCAC 60B .1030*	35:20 NCR
<u>Hours of Operation</u>	02 NCAC 60B .1031	35:20 NCR
<u>Enforcement</u>	02 NCAC 60B .1032*	35:20 NCR
<u>Parking</u>	02 NCAC 60B .1033	35:20 NCR
<u>Abandoned Property</u>	02 NCAC 60B .1034	35:20 NCR
<u>Minors</u>	02 NCAC 60B .1035	35:20 NCR
<u>Firearms</u>	02 NCAC 60B .1036	35:20 NCR

CREDIT UNION DIVISION

<u>Management Duties</u>	04 NCAC 06C .0304*	35:22 NCR
<u>Independent Audits</u>	04 NCAC 06C .0305*	35:22 NCR

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

<u>Definitions</u>	07 NCAC 14A .0101*	35:22 NCR
<u>Firearms</u>	07 NCAC 14B .0401*	35:22 NCR
<u>Animals at Large</u>	07 NCAC 14B .0504*	35:22 NCR
<u>Photographs</u>	07 NCAC 14B .0602	35:22 NCR
<u>Use of Facilities and Grounds</u>	07 NCAC 14B .0605*	35:22 NCR
<u>ALMS and Contributions</u>	07 NCAC 14B .0606*	35:22 NCR
<u>Soliciting Donations: Distributing Literature: Gifts</u>	07 NCAC 14B .0607	35:22 NCR

ELECTIONS, STATE BOARD OF

<u>Political Party Formation, Termination, and Reinstatement</u>	08 NCAC 01 .0107*	35:19 NCR
<u>General Guidelines</u>	08 NCAC 09 .0106*	35:19 NCR
<u>First Recount</u>	08 NCAC 09 .0107*	35:19 NCR
<u>Recount of Direct Record Electronic Voting Machines</u>	08 NCAC 09 .0108	35:19 NCR
<u>Guidelines for Determining Voter Intent</u>	08 NCAC 09 .0109*	35:19 NCR
<u>Election Observers</u>	08 NCAC 20 .0101*	35:19 NCR
<u>Reporting of Independent Expenditures</u>	08 NCAC 21 .0102*	35:19 NCR
<u>Reporting of Special Contributions</u>	08 NCAC 21 .0103*	35:19 NCR
<u>Reporting of Electioneering Communications</u>	08 NCAC 21 .0104*	35:19 NCR
<u>Electronic Signature</u>	08 NCAC 21 .0107*	35:19 NCR
<u>Procedures for Closing a Committee</u>	08 NCAC 21 .0202*	35:19 NCR
<u>Certification of Threshold</u>	08 NCAC 21 .0203*	35:19 NCR
<u>Examination by the State Board of Elections</u>	08 NCAC 21 .0401*	35:19 NCR
<u>Billboards</u>	08 NCAC 21 .0501*	35:19 NCR

SOCIAL SERVICES COMMISSION

<u>Methods of Provision</u>	10A NCAC 71K .0101	35:20 NCR
<u>Freedom of Choice</u>	10A NCAC 71K .0102	35:20 NCR
<u>Nature and Scope</u>	10A NCAC 71L .0101*	35:20 NCR
<u>Approval Criteria</u>	10A NCAC 71L .0102*	35:20 NCR
<u>Application Process</u>	10A NCAC 71L .0103*	35:20 NCR
<u>Additional Requirements for the Private Agency</u>	10A NCAC 71L .0104	35:20 NCR
<u>Procedure for Approval and Payment</u>	10A NCAC 71L .0105*	35:20 NCR
<u>Development of Service Plan</u>	10A NCAC 71L .0106*	35:20 NCR
<u>Assessing the Appropriateness of Alternative Types of Liv...</u>	10A NCAC 71L .0107*	35:20 NCR
<u>Refugee Assistance Services</u>	10A NCAC 71O .0101*	35:20 NCR
<u>Service Goals</u>	10A NCAC 71O .0102*	35:20 NCR
<u>Methods of Service Provision</u>	10A NCAC 71O .0103*	35:20 NCR
<u>Eligibility</u>	10A NCAC 71O .0104*	35:20 NCR
<u>Definitions</u>	10A NCAC 72 .0102*	35:20 NCR

COASTAL RESOURCES COMMISSION

<u>AECs Within Ocean Hazard Areas</u>	15A NCAC 07H .0304*	35:08 NCR
<u>Technical Standards for Beach Fill Projects</u>	15A NCAC 07H .0312*	35:08 NCR
<u>Requesting the Static Line Exception</u>	15A NCAC 07J .1201	34:09 NCR
<u>Review of the Static Line Exception Request</u>	15A NCAC 07J .1202	34:09 NCR
<u>Procedure for Approving the Static Line Exception</u>	15A NCAC 07J .1203*	34:09 NCR

<u>Review of the Large-Scale Beach-Fill Project and Approved...</u>	15A NCAC 07J .1204*	34:09 NCR
<u>Revocation and Expiration of the Static Line Exception</u>	15A NCAC 07J .1205*	34:09 NCR
<u>Local Government and Communities with Static Vegetation L...</u>	15A NCAC 07J .1206	34:09 NCR
<u>Requesting the Development Line</u>	15A NCAC 07J .1301	34:09 NCR
<u>Procedures for Approving the Development Line</u>	15A NCAC 07J .1302*	34:09 NCR
<u>Local Governments and Communities with Development Lines</u>	15A NCAC 07J .1303	34:09 NCR
<u>Declaration of General Policy</u>	15A NCAC 07M .0301*	34:09 NCR
<u>Definitions</u>	15A NCAC 07M .0302*	34:09 NCR
<u>Standards for Public Access</u>	15A NCAC 07M .0303*	34:09 NCR
<u>Local Government and State Involvement in Access</u>	15A NCAC 07M .0306*	34:09 NCR
<u>Eligibility, Selection Criteria and Matching Requirements</u>	15A NCAC 07M .0307*	34:09 NCR
<u>Public Involvement/Notice</u>	15A NCAC 07M .0308*	34:09 NCR

TRANSPORTATION - MOTOR VEHICLES, DIVISION OF

<u>Forms and Publications</u>	19A NCAC 03D .0102	35:17 NCR
<u>Conditions for Issuing Temporary Markers by a Dealer</u>	19A NCAC 03D .0221*	35:17 NCR
<u>Dealer Plates</u>	19A NCAC 03D .0223*	35:17 NCR
<u>Illegal Use of Dealer Plates</u>	19A NCAC 03D .0224*	35:17 NCR
<u>Vehicles Offered for Sale Owned by Dealership</u>	19A NCAC 03D .0225*	35:17 NCR
<u>Vehicles Offered for Sale on Consignment</u>	19A NCAC 03D .0226*	35:17 NCR
<u>Vehicles Offered for Sale on a Floor Plan Lien</u>	19A NCAC 03D .0227*	35:17 NCR
<u>Corp. Surety Bonds: Mobile Manufactured Home Dealers</u>	19A NCAC 03D .0229*	35:17 NCR
<u>Unclaimed Motor Vehicle</u>	19A NCAC 03D .0402*	35:17 NCR
<u>Sale of Vehicle to Satisfy Storage or Mechanic's Lien</u>	19A NCAC 03D .0403*	35:17 NCR
<u>Sale of Motor Vehicle Under Judicial Proceedings</u>	19A NCAC 03D .0404*	35:17 NCR
<u>Sale of Abandoned Vehicle</u>	19A NCAC 03D .0405*	35:17 NCR
<u>Definitions</u>	19A NCAC 03D .0517*	35:17 NCR
<u>Licensing of Safety or Emissions Inspection Stations</u>	19A NCAC 03D .0518*	35:17 NCR
<u>Stations</u>	19A NCAC 03D .0519*	35:17 NCR
<u>Mechanic Requirements</u>	19A NCAC 03D .0520*	35:17 NCR
<u>Licensing Requirements</u>	19A NCAC 03D .0521*	35:17 NCR
<u>Denial, Suspension or Revocation of Licenses</u>	19A NCAC 03D .0522*	35:17 NCR

COSMETIC ART EXAMINERS, BOARD OF

<u>Address</u>	21 NCAC 14A .0104*	35:21 NCR
<u>Fees</u>	21 NCAC 14A .0404*	35:21 NCR
<u>Disinfection Procedures</u>	21 NCAC 14H .0403*	35:21 NCR
<u>All Cosmetic Art Schools</u>	21 NCAC 14T .0201	35:21 NCR
<u>Permanent Records, Forms and Documentation</u>	21 NCAC 14T .0502*	35:21 NCR
<u>Additional Hours</u>	21 NCAC 14T .0616*	35:21 NCR
<u>School Approval Changes and School Closing</u>	21 NCAC 14T .0706*	35:21 NCR

NURSING, BOARD OF

<u>Administration</u>	21 NCAC 36 .0317*	35:20 NCR
<u>Faculty</u>	21 NCAC 36 .0318*	35:20 NCR

VETERINARY MEDICAL BOARD

<u>Veterinary Telemedicine</u>	21 NCAC 66 .0211*	35:20 NCR
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**TITLE 02 - DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

02 NCAC 60B .1001 SCOPE

(a) This Section coordinates the use of the North Carolina Forest Service's State Forests, State Recreational Forests, and Educational State Forests. In keeping with the North Carolina Forest Service's mission to protect, manage, and promote forest resources for the citizens of North Carolina, each State Forest, State Recreational Forest, and Education State Forest shall have a mission statement and shall be managed sustainably.

(b) All rules of this Section are effective within and upon all State Forests, State Recreational Forests, and Educational State Forests.

*History Note: Authority G.S. 106-22; 106-870; 106-877;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1228 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 19, 2015;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1002 DEFINITIONS OF TERMS

As used in this Section the following terms have the following meanings:

- (1) "Bike Trail" means any road or trail maintained for bicycles.
- (2) "Bridle Trail" means any road or trail maintained for persons riding on horseback.
- (3) "Commissioner" means the Commissioner of the North Carolina Department of Agriculture and Consumer Services.
- (4) "Department" means the North Carolina Department of Agriculture and Consumer Services.
- (5) "Educational State Forest" refers to any State Forest property operated by the North Carolina Forest Service for the purpose of educating schoolchildren and the public.
- (6) "Emergency Aircraft" means aircraft operated by an emergency response agency.
- (7) "Forest Supervisor" means an employee of the North Carolina Forest Service who is a forest supervisor and provides supervision to other North Carolina Forest Service employees of the forest.
- (8) "Group" means a number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.
- (9) "Hiking Trail" means any road or trail maintained for pedestrians.
- (10) "Multi-use Trail" means any road or trail maintained for use by the following: horseback riding, bicycle riding, and hiking or other foot traffic.

- (11) "Hunting" means the lawful hunting of game animals as defined by the North Carolina Wildlife Resources Commission.
- (12) "Motorized vehicle" means any vehicle which is self-propelled, or which is pulled by a self-propelled vehicle, such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. A self-propelled vehicle shall include passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, mini-bikes, all-terrain vehicles, 2 or 3 wheeled personal transporters, battery assisted bicycles (E-Bikes), and go-carts. "Motorized vehicle" does not include accommodations made in accordance with the Americans with Disabilities Act of 1990 and Chapter 168A of the North Carolina General Statutes.
- (13) "Registered Motor Vehicle" is any vehicle that has been legally registered and tagged from a state department of motor vehicles or department of transportation.
- (14) "Permit" means any written license issued by or under the authority of the North Carolina Forest Service or Department permitting the performance of a specified act or acts.
- (15) "Permittee" means any person, corporation, company, or association in possession of a valid permit.
- (16) "Person" means any individual, firm, partnership, corporation, company, association, public or private institution, political subdivision, or government agency.
- (17) "Public building" means a climate-controlled structure primarily for human habitation or use, and does not include barns, shelters, or sheds.
- (18) "Public nudity" means a person's intentional failure to cover with an opaque covering the person's genitals, pubic area, anal area, or areola on female breasts except for breastfeeding while in a public place.
- (19) "State Recreational Forest" is a State Forest designation that refers to any State Forest property operated by the North Carolina Forest Service primarily for natural resource preservation, scenic enjoyment and recreational purposes, while also managing for the purposes of education, demonstration, training, forest research, wildlife habitat, and forest products, including the DuPont State Forest.
- (20) "Rock climbing" means traversing a rock face that is steep enough to require the use of hands and feet to get up or down.
- (21) "State Forest" means any land owned by the State of North Carolina, under the jurisdiction of the North Carolina Forest Service, that is managed for the purposes of education,

demonstration, training, forest research, wildlife habitat, forest products and recreation.

History Note: Authority G.S. 106-22; 106-877; 106-887; 143-116.8;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1229 Eff. May 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;
Amended Eff. September 1, 2021.

02 NCAC 60B .1003 PERMITS

(a) Any violation of a permit constitutes grounds for its revocation by the Department. In case of a permit revocation the permit holder shall forfeit to the Department all monies paid for the permit. Furthermore, the Department shall consider the permit holder, together with the permit holder's agents and employees who violated such terms, jointly and severally liable to the Department for all damages suffered in excess of money so forfeited. However, neither the forfeiture of such money, nor the recovery of such damages, relieves such persons from statutory punishment for any violation of a State Forest, State Recreational Forest, or Educational State Forest rule.

(b) Applications for permits shall be submitted to the North Carolina Forest Service's office during business hours. Applications may be found at <https://ncforestservice.gov/>. The permit application shall include the company or organization name, address, contact with title, phone number, email address, description of the activity or the event with the location to be permitted, access areas to be used, timeframe of the activity or event, estimated number of participants, liability insurance, and medical plan. Applications shall be approved by the Forest Supervisor or designee in advance of the act permitted.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1230 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1004 ROCK OR CLIFF CLIMBING AND RAPPELLING

A person shall not engage in rock climbing, cliff climbing, or rappelling within the boundaries of a State Forest, State Recreational Forest, or Educational State Forest except at designated areas and only after obtaining a permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1231 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1005 BATHING OR SWIMMING

(a) A person shall not dive, jump, or slide from any waterfalls or rocks or overhangs into any body of water within any State Forest, State Recreational Forest, or Educational State Forest.

(b) Wading, bathing, and swimming is allowed at a person's own risk in any body of water in and upon any State Forest, State Recreational Forest, or Educational State Forest, except such activities are prohibited within 300 feet upstream of the top of a waterfall or areas designated as non-swimming.

(c) Public nudity is prohibited in and upon all State Forest, State Recreational Forest, and Educational State Forest lands or waters. This Rule does not apply to the enclosed portions of bathhouses, restrooms, tents, and recreational vehicles.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1232 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1006 HUNTING

(a) Hunting in and upon all State Forests, State Recreational Forests, and Educational State Forests shall be by permit or license only, or a combination thereof, depending on the requirements of the individual State Forest, State Recreational Forest, or Educational State Forest. Interested parties shall contact the State Forest office, State Recreational Forest, or Educational State Forest in question. The contact and additional information for each State Forest, State Recreational Forest, or Educational State Forest office can be found at <https://www.ncforestservice.gov/>.

(b) A person hunting in and upon State Forests, State Recreational Forests, or Educational State Forests under the Game Lands Program shall first obtain a license from a North Carolina Wildlife Resources Commission designated licensing agent and shall obey all State hunting laws set forth in Chapter 113 of the North Carolina General Statutes and rules in effect for the applicable Game Land, pursuant to 15A NCAC 10.

(c) For State Forests, State Recreational Forests, and Educational State Forests that are not in the Game Lands Program, hunting shall be allowed only if a person first obtains a permit from the Forest Supervisor's office and complies with all State hunting laws and rules in effect, including Chapter 113 of the North Carolina General Statutes and 15A NCAC 10.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1233 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1007 FISHING

Except in areas designated as non-fishing, a person may fish in any waters in State Forests, State Recreational Forests, or Educational State Forests provided the person obeys all State fishing laws as set forth in Chapter 113 of the North Carolina General Statutes and 15A NCAC 10.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;

*Transferred from 15A NCAC 09C .1234 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1008 ANIMALS AT LARGE

- (a) No person shall have any dog, cat, or other pet upon a State Forest, State Recreational Forest, or Educational State Forest unless the animal is on a physical leash and under the control of the owner or person possessing the animal.
- (b) Hunting dogs used in accordance with North Carolina Wildlife Commission Game Land Rules pertaining to State Forests pursuant to 15A NCAC 10, shall be exempt from Paragraph (a) of this Rule.
- (c) No dog, cat, or other pet shall be allowed to enter any public building on State Forests, State Recreational Forest, or Educational State Forest, or designated swimming areas, except service animals for persons with disabilities in accordance with the Americans with Disabilities Act of 1990 and Chapter 168 of the North Carolina General Statutes.
- (d) Any owned animal or pet causing a threat or nuisance as determined on a case-by-case basis within any State Forest, State Recreational Forest, or Educational State Forest shall be removed.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1235 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1009 BOATING

- (a) Except in areas designated as non-boating, boats, canoes, kayaks, and other watercraft, including flotation devices, shall be allowed on the waters of State Forests, State Recreational Forests, and Educational State Forests, provided they are operated or propelled by means of oars, paddles, or electric trolling motors.
- (b) Boats and other watercraft with gas motors attached are prohibited on any waters of State Forests, State Recreational Forests, and Educational State Forests, except for use by rescue squads, diving teams, or similar organizations conducting training or emergency operations or by the Department or the North Carolina Wildlife Resources Commission.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1236 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1010 CAMPING

- (a) No person shall spend the night or maintain a camp in a State Forest, State Recreational Forest, or Educational State Forest, except in designated areas or under permit.
- (b) A person camping in a designated area shall not stay more than one 24-hour period without a valid permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

*Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1237 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1011 SPORTS AND GAMES

No games or athletic contests shall be allowed in a State Forest, State Recreational Forest, or Educational State Forest, except in designated places or under permit.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1238 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1012 HORSES

- (a) No person shall use, ride, or drive a horse except to, from, or along a designated bridle path, multi-use trail designated for horses, or designated watering point.
- (b) Each person bringing a horse in or upon any State Forest, State Recreational Forest, or Educational State Forest shall remove from designated parking areas, sidewalks, covered bridges, paved surfaces, and wooden surfaces all residues, including manure, generated by his or her horse.
- (c) Anytime a horse is constrained in a State Forest, State Recreational Forest, or Educational State Forest, it shall be done in a manner so as to prevent damage to trees or plants nearby.
- (d) Horses shall be steered or led across rivers and streams using preexisting crossings along designated trails.
- (e) Horses shall not be allowed to wade in lakes.
- (f) A person bringing a horse in or upon any State Forest, State Recreational Forest, or Educational State Forest shall possess valid negative Equine Infectious Anemia test, also known as a Coggins test for each horse and make them available for inspection upon request by North Carolina Forest Service employees or employees of the Department.
- (g) No horse-drawn carts, carriages, or other apparatus shall be allowed in or upon State Forests, State Recreational Forests, or Educational State Forests except by permit.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1239 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.*

02 NCAC 60B .1013 BICYCLES

- (a) No person shall use or ride a bicycle in or upon State Forest, State Recreational Forest, or Educational State Forest grounds except on a road or trail authorized for public use by motor vehicles or designated as a bike trail or multi-use trail.
- (b) Persons riding bicycles shall cross rivers and streams using preexisting crossings along designated trails.
- (c) Motorized bicycles or battery assisted bicycles, also known as E-Bikes, are allowed only on motor vehicle roads open to public

vehicular traffic and not allowed on bike trails, bridle trails, hiking trails, or multiuse trails.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1240 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1014 SKATES, BLADES AND BOARDS

No person shall use or ride roller skates, in-line skates, roller blades, skateboards, or any similar device in or upon any State Forest, State Recreational Forest, or Educational State Forest.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1241 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1015 EXPLOSIVES

No person shall carry or possess any explosives or explosive substances including fireworks in or upon State Forests, State Recreational Forests, or Educational State Forests.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC .1242 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1017 FIRES AND GRILLS

- (a) No person shall build or start a fire in any area of a State Forest, State Recreational Forest, or Educational State Forest, unless that area is designated for such purpose.
- (b) Tree planters and logging crews may build warming fires if they obtain a permit and confine the fire to an area designated for such purpose.
- (c) Prescribed burning conducted by the North Carolina Forest Service or approved by the North Carolina Forest Service pursuant to G.S. 106-966 is exempt from this Rule.
- (d) Except in designated areas, cooking fires, grills, ovens, stoves, burners, or other devices that ignite natural gas or other petroleum products are prohibited. Likewise, the burning of wood, charcoal or paper is also prohibited except in designated areas.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1244 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1018 DISORDERLY CONDUCT

- (a) No person visiting a State Forest, State Recreational Forest, or Educational State Forest shall disobey a lawful order of a Forest

Ranger, law enforcement officer, or any other Department official or endanger him or herself or endanger or disrupt others, as defined in G.S. 14-288.4 and G.S. 14-132.

- (b) No person shall use, walk, or run on or along a road or trail that is designated closed for maintenance, tree removal or any other purpose, nor shall he or she enter an area that is designated "No Entry," "Do Not Enter," or "Authorized Personnel Only," except for North Carolina Forest Service employees, contractors working under the direction of the North Carolina Forest Service, volunteers under the direction of the North Carolina Forest Service, and individuals or groups under permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1245 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1019 INTOXICATING BEVERAGES AND DRUGS

- (a) No person shall possess, consume, use, or be under the influence of any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, while in or upon a State Forest, State Recreational Forest, or Educational State Forest.
- (b) No person shall possess, consume, use, or be under the influence of any non-prescribed controlled substance as defined in G.S. 90-87, including marijuana, while in or upon a State Forest, State Recreational Forest, or Educational State Forest.

History Note: Authority G.S. 106-22; 106-870; 106-877;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1246 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1020 DAMAGE TO BUILDINGS, STRUCTURES AND SIGNS

No person shall injure, deface, disturb, destroy, or disfigure any State Forest, State Recreational Forest, or Educational State Forest building, structure, sign, fence, vehicle, machine, equipment, road, parking lot, or any improvements.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1247 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1021 COMMERCIAL ENTERPRISES

- (a) No person shall sell or offer for sale, hire or lease, any object or merchandise, property, privilege, service or any other thing, or engage in any business in or upon a State Forest, State Recreational Forest, or Educational State Forest except under permit.

(b) Sales by the Department or sales that are contracted by the Department or by an entity that is under agreement with the Department are exempt from this Rule.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1248 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1022 NOISE REGULATIONS

(a) The production or emission of noises, speech, music, or other sound, that is unreasonably loud or disturbing in or upon a State Forest, State Recreational Forest, or Educational State Forest by a person or animal under the control of a person is prohibited.

(b) For the purposes of this Rule, the following definitions apply.

- (1) "Unreasonably loud" means a noise which is incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace, order, or calm of the area, or which is obnoxious to, or unreasonably disturbing to, a person whose residence, work, or commercial enterprise is within a reasonable proximity to the point, place, or person from whom the noise is emanating, or emanated, and the noise is of such a kind, nature, duration, or extent that a reasonable person would consider the noise to be unreasonably loud or disturbing.
- (2) "Disturbing" means a noise which is perceived by a person of reasonable and ordinary firmness and sensibilities as interrupting the normal peace, order, and calm of such person, or persons, or tending to annoy, disturb, or frighten such persons in such proximity to the point, place, or person from whom the noise is emanating, or emanated.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. December 1, 2009;
Transferred from 15A NCAC 09C .1249 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1024 ALMS AND CONTRIBUTIONS

A person shall not solicit contributions for any purpose in or upon a State Forest, State Recreational Forest, or Educational State Forest, unless permitted by the Department and such contributions are used to benefit the State Forest, State Recreational Forest, or Educational State Forest.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1251 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1025 AVIATION

(a) Except as provided in Paragraphs (b) and (c) of this Rule, a person shall not voluntarily bring, land, or cause to descend or alight, ascend, or take off within or upon any State Forest, State Recreational Forest, or Educational State Forest any airplane, flying machine, balloon, parachute, glider, hang glider, unmanned aerial vehicle ("UAV"), drones, or other apparatus for aviation. "Voluntarily" for this Rule means anything other than a forced landing.

(b) Where aviation activities are part of the planned forest activities or military, law enforcement, or rescue training, a permit for aviation use shall be required.

(c) North Carolina Forest Service and emergency aircraft are exempt from this Rule.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1252 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1026 EXPULSION

For violation of any rule in this Subchapter, Department law enforcement officers, other sworn law enforcement, or Forest Rangers shall withdraw the right of the violator to remain on a State Forest, State Recreational Forest, or Educational State Forest, and shall verbally direct the violator to leave the premises. If the violator does not or is not able to comply, then the violator shall be escorted off the premises.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887; 106-898; 106-900;
Eff. December 1, 2009;
Transferred from 15A NCAC 09C .1253 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1027 MOTORIZED VEHICLES

(a) Motorized vehicles shall not be operated in or upon a State Forest, State Recreational Forest, or Educational State Forest hiking trail, bike trail, bridle trail, multi-use trail, fire trail, service road, or any part of the forest not designated for such purposes, except by permit.

(b) Emergency responders and construction or service vendors are exempt from Paragraph (a) of this Rule.

(c) Unless otherwise posted, the speed limit is 20 miles per hour on graveled forest roads and 10 miles per hour on dirt forest roads.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887; 143-116.8;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1254 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1028 FLOWERS, PLANTS, MINERALS, ETC.

- (a) A person shall not remove, destroy, cut down, scar, mutilate, take, gather, or injure any tree, flower, artifact, fern, shrub, rock, fungi, or other plant or mineral in or upon any State Forest, State Recreational Forest, or Educational State Forest.
- (b) A person shall not collect plants, animals, minerals, fungi, or other artifacts from any State Forest, State Recreational Forest, or Educational State Forest without first having obtained a permit from the Forest Supervisor or designee.
- (c) No person shall use a metal detector on a State Forest, State Recreational Forest, or Educational State Forest without a permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1255 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1029 TRASH AND DEBRIS

- (a) A person shall not deposit paper or plastic products, bottles, cans, or any other refuse, or debris in or upon a State Forest, State Recreational Forest, or Educational State Forest except in receptacles designated for the materials. Where trash receptacles are not provided, persons shall take their trash out of the forest.
- (b) No one shall dispose of household or business trash or garbage in any State Forest, State Recreational Forest, or Educational State Forest.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1256 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1030 FEES AND CHARGES

- (a) The required admission fees or related activity fees at State Forests, State Recreational Forests, and Educational State Forests, including permits, facility use, special events, or the removal of firewood or vegetative material, may be obtained online at <https://www.ncforestservice.gov/> or by contacting the office of each State Forest. The contact information for each State Forest, State Recreational Forest, and Educational State Forest may be found online at <https://www.ncforestservice.gov/>.
- (b) Payment of the required fees shall be a prerequisite for the use of the public service facility or convenience provided.
- (c) The number of persons camping at a particular site may be limited by the forest supervisor or designee depending upon the size of the group and the size and nature of the campsite.
- (d) Reservations shall be canceled 30 days prior to the event in order to receive a refund. Activity fees are non-refundable.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887; 150B-1(d)(26);
Eff. June 14, 2010;
Transferred from 15A NCAC 09C .1257 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;

Amended Eff. September 1, 2021.

02 NCAC 60B .1031 HOURS OF OPERATION

- (a) Hours of operation for each State Forest, State Recreational Forest, and Educational State Forest shall be posted at the forest entrance, the forest office, and on the North Carolina Forest Service's website at <https://www.ncforestservice.gov/>. Hours are subject to change depending on seasonal, emergency, and natural resource protection by the Forest Supervisor or designee.
- (b) No person except Department employees and authorized persons shall be allowed in or upon State Forests, State Recreational Forest, or Educational State Forest between closing and opening hours except in designated areas or under permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1258 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1032 ENFORCEMENT

Departmental law enforcement officers, other sworn law enforcement, and Forest Rangers may enforce the rules of this Section.

History Note: Authority G.S. 106-22; 106-877; 106-887; 106-897; 106-899; 106-900; 106-901;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1259 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2021.

02 NCAC 60B .1033 PARKING

- (a) There shall be no parking in State Forest, State Recreational Forest, or Educational State Forest areas designated as "No Parking" and "Authorized Vehicles Only." Additionally:
 - (1) vehicles shall be parked in areas designated for that vehicle type; and
 - (2) visitors shall not park a vehicle, trailer, or other object in a manner that blocks, or restricts access, ingress, or egress to a parking area, road, gate, or access point.
- (b) Vehicles, trailers, or other objects blocking or restricting emergency or Department personnel or visitors' access, ingress, or egress to any parking area, road, gate, or access point shall be removed at the owners' expense and without notice.
- (c) Vehicles parked in areas not designated for that vehicle type or in areas designated as "No Parking" or "Authorized Vehicles Only" shall be removed at the owners' expense and without notice.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. September 1, 2021.

02 NCAC 60B .1034 ABANDONED PROPERTY

Any property left unattended for a period of 24 hours or more on a State Forest, State Recreational Forest, or Educational State Forest shall be considered abandoned property and shall be

subject to removal at the owner's expense, or in the case ownership cannot be established, disposed of by the Department without notice.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. September 1, 2021.

02 NCAC 60B .1035 MINORS

Parents, guardians, and custodians, of minor children shall ensure the minor comply with all North Carolina Forest Service rules.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. September 1, 2021.

02 NCAC 60B .1036 FIREARMS

All applicable federal, State, and local laws regarding firearms shall apply in or upon State Forests, State Recreational Forests, and Educational State Forests.

History Note: Authority G.S. 106-22; 106-870; 106-877;
Eff. September 1, 2021.

TITLE 04 - DEPARTMENT OF COMMERCE

04 NCAC 06C .0304 MANAGEMENT DUTIES

All credit unions shall conduct their business and the selection of their employees using management and business skills to assure the safe and sound operation of the credit union. Management shall be responsible for:

- (1) implementing the policies established by the board of directors;
- (2) ensuring the accuracy of the credit union's financial statements, reports, and any other supporting documents;
- (3) adopting and implementing an annual budget;
- (4) developing and implementing a written plan that guides the strategic direction of the credit union and that is also commensurate with the credit union's size and complexity;
- (5) conducting performance evaluations of all employees of the credit union; and
- (6) ensuring all directors, committee members, and employees of the credit union receive training through educational opportunities commensurate with their responsibilities and duties and document completion of the training. In the event examiners find that a director, committee member, or employee of the credit union has not received training commensurate with his or her responsibilities and duties, the Credit Union Division shall require training. Educational opportunities may be obtained from but not limited to the League, the Credit Union Division, other trade associations, credit union support groups, and other industry training organizations.

History Note: Authority G.S. 54-109.12; 54-109.19; 54-109.35; 54-109.92;
Eff. February 1, 1976;
Readopted Eff. April 4, 1978;
Amended Eff. October 1, 1983;
Readopted Eff. February 1, 2018;
Amended Eff. September 1, 2021.

04 NCAC 06C .0305 INDEPENDENT AUDITS

(a) An audit of each State-chartered credit union shall occur at least once each calendar year and shall cover the period elapsed since the last audit. The audit shall be performed using generally accepted auditing standards. It shall be the responsibility of the supervisory committee, or board of directors if there is no supervisory committee, to ensure that:

- (1) generally accepted auditing standards are used;
- (2) an audit of the credit union records is conducted using the minimum procedures applicable to federally insured state-chartered credit unions as set forth in 12 CFR Part 715, which is herein incorporated by reference, including subsequent amendments and editions, and may be found at no cost at www.ecfr.gov; and
- (3) the audit report is prepared and submitted to the board of directors.

Workpapers of the supervisory committee or its independent auditors shall be made available for review by the Credit Union Division.

(b) Compensated auditors performing audits for credit unions shall be independent of the credit union's employees, members of the board of directors, supervisory committee, credit committee, or the credit union's loan officers and members of their household or immediate families. For the purposes of this Rule, "member of their immediate families" includes immediate blood relatives and members attained by marriage, including spouses, biological children, adopted children, and step-children, as well as domestic partners. Compensated auditors must be a Certified Public Accountant (CPA), or a bonded auditing firm, or a person who is bonded or has accountants' professional liability insurance coverage.

(c) The supervisory committee, or board of directors if there is no supervisory committee, shall verify or cause to be verified all depositors' and members' accounts annually. The results of the member account verification shall be submitted to the board of directors for review. The verification of members' accounts shall be made using either of the following methods:

- (1) a controlled verification of 100 percent of share, deposit, and loan accounts; or
- (2) a controlled random sampling method that provides assurance that the general ledger accounts are fairly stated and that members' and depositors' accounts are properly safeguarded.

(d) A credit union shall obtain an outside independent audit by a CPA for any fiscal year during which:

- (1) the required annual audit was not performed or was not in accordance with Paragraphs (a), (b), or (c) of this Rule; or
- (2) the credit union has experienced serious or persistent recordkeeping deficiencies. For the

purposes of this Subparagraph, "persistent" means continuing to exist or endure. For the purposes of this Subparagraph, "serious" is when the Division has cause for concern that the financial condition is not fairly and accurately presented or that management practices are not sufficient to safeguard the assets of the credit union.

When a credit union fails to comply with this Rule, the Administrator has the authority to engage an outside CPA at the credit union's expense to conduct the required annual audit.

History Note: Authority G.S. 54-109.12; 54-109.35(b); 54-109.49;
Eff. February 1, 1976;
Readopted Eff. April 4, 1978;
Amended Eff. October 1, 1991; October 1, 1983; May 1, 1983;
January 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. September 1, 2021.

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

07 NCAC 14A .0101 DEFINITIONS

As used in this Chapter:

- (1) "Council" means the North Carolina Zoological Park Council;
- (2) "Department" means the North Carolina Department of Natural and Cultural Resources;
- (3) "Foot Path or Trail" means any path or trail maintained for pedestrians;
- (4) "Owner" means any person owning, leasing or having the exclusive use of property;
- (5) "Zoo", "Park", and "Zoological Parks" mean those lands, facilities, programs, and other assets (including animals and plants) owned, controlled, or operated by the Department for the use of the North Carolina Zoological Park;
- (6) "Permits" means any written license issued by or under authority of the Department permitting the performance of a specified act or acts;
- (7) "Person" means any natural person, corporation, partnership, association, or governmental unit; and
- (8) "Secretary" means the Secretary of the Department of Natural and Cultural Resources.

History Note: Authority G.S. 143B-135.204(a);
Eff. February 1, 1976;
Amended Eff. July 1, 1979;
Transferred w/change from T15.12E Eff. August 1, 1982;
Amended Eff. August 2, 1993; September 1, 1988; November 1, 1984; October 1, 1984;
Transferred from 15A NCAC 22A .0101 Eff. April 1, 2017;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. September 1, 2021.

07 NCAC 14B .0401 FIREARMS

No one, except Zoo employees designated by the Director or his or her designated representative, law enforcement officials with jurisdictional authority, or other persons as defined in G.S. 14-269(b) and G.S. 14-415.27, may carry or possess firearms, airguns, bows and arrows, slingshots, or deadly weapons of any kind as defined in G.S. 14-269 within the Zoo.

History Note: Authority G.S. 143B-135.204(a);
Eff. February 1, 1976;
Transferred w/change from T15.12E Eff. August 1, 1982;
Amended Eff. October 1, 1984;
Transferred from 15A NCAC 22B .0401 Eff. April 1, 2017;
Readopted Eff. September 1, 2021.

07 NCAC 14B .0504 ANIMALS AT LARGE

A person shall not cause or permit any animal owned by him or her, in his or her custody, or under his or her control to enter the perimeter fence of the Zoo, except as permitted by applicable federal and state law for service animals assisting individuals with disabilities. All animals on Zoo property outside of the perimeter fence must be leashed, harnessed, or otherwise controlled by the person in custody of the animal. Animals found at large may be seized and disposed of as provided by law covering disposal of stray animals on public property.

History Note: Authority G.S. 143B-135.204(a);
Eff. February 1, 1976;
Transferred w/change from T15.12E Eff. August 1, 1982;
Transferred from 15A NCAC 22B .0504 Eff. April 1, 2017;
Readopted Eff. September 1, 2021.

07 NCAC 14B .0602 PHOTOGRAPHS

History Note: Authority G.S. 143B-10(j); 143B-135.204(a);
Eff. February 1, 1976;
Transferred w/change from T15.12E Eff. August 1, 1982;
Amended Eff. October 1, 1984;
Transferred from 15A NCAC 22B .0602 Eff. April 1, 2017;
Repealed Eff. September 1, 2021.

07 NCAC 14B .0605 USE OF FACILITIES AND GROUNDS

(a) Any person or group requesting to rent; commercially photograph, film or make other recordings; or otherwise use any of the Zoo's buildings or grounds for a private purpose shall obtain prior written permission from the Zoo Director, or his or her designee, for use of the building or grounds. For the purposes of this Rule, "a private purpose" includes activities which are outside of the daily operations of the Zoo. Prior to the approved use, the user shall enter into a written agreement setting forth the terms of the use of the requested facility or grounds.

(b) In determining whether to approve the use, the Zoo Director, or his or her designee, shall consider the following factors:

- (1) the reason for the use;

- (2) the availability of the requested facilities or grounds, or portion thereof;
- (3) the impact of the use on the operations of the Zoo, including the impact to public access and animal safety and health;
- (4) the impact of the use on the Zoo's resources, facilities and grounds; and
- (5) whether the use would be detrimental to the purposes or mission of the Zoo.

(c) No person or group shall violate the terms and conditions of the written agreement. Violations of the terms or conditions shall result in revocation by the Director or his or her designee.

History Note: Authority G.S. 143B-135.204(a); Eff. February 1, 1976; Transferred w/change from T15.12E Eff. August 1, 1982; Amended Eff. November 1, 1984; Transferred from 15A NCAC 22B .0605 Eff. April 1, 2017; Readopted Eff. September 1, 2021.

07 NCAC 14B .0606 ALMS AND CONTRIBUTIONS

(a) No person or organization shall solicit alms, donations, or contributions; distribute literature or other objects; or proselytize within the Park, except in accordance with a signed agreement issued pursuant to Rule .0605 of this Section.

(b) This Rule shall not apply to any persons engaged in fundraising activities sponsored by the North Carolina Zoological Society for the purpose of supporting the Zoo in accordance with any agreements mutually approved by the Zoo and the North Carolina Zoological Society.

History Note: Authority G.S. 143B-135.204(a); Eff. February 1, 1976; Transferred w/change from T15.12E Eff. August 1, 1982; Amended Eff. November 1, 1984; October 1, 1984; Transferred from 15A NCAC 22B .0606 Eff. April 1, 2017; Readopted Eff. September 1, 2021.

07 NCAC 14B .0607 SOLICITING DONATIONS: DISTRIBUTING LITERATURE: GIFTS

History Note: Authority G.S. 143B-10(j); 143B-135.204(a); Eff. November 1, 1984; Transferred from 15A NCAC 22B .0607 Eff. April 1, 2017; Repealed Eff. September 1, 2021.

TITLE 08 – BOARD OF ELECTIONS

08 NCAC 01 .0107 POLITICAL PARTY FORMATION, TERMINATION, AND REINSTATEMENT

(a) Pursuant to G.S. 163-97, a political party ceases to be a political party on the date the State Board certifies the general State election in which the political party failed to poll for its candidate for Governor, or for presidential electors, at least two percent of the entire vote cast in the State for Governor or for presidential electors. Any voter registration form received after that date by a county board of elections where the applicant chooses to affiliate with an expired political party shall be

registered as "unaffiliated," except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board of elections shall not change the registrant's political party affiliation.

(b) Notwithstanding Paragraph (a) of this Rule, a political party shall not cease to be a political party under G.S. 163-97 if it submits to the State Board of Elections by the date of the State canvass documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least 70 percent of the states in the prior Presidential election.

(c) Voters affiliated with an expired political party shall be changed to "unaffiliated designation" as required by G.S. 163-97.1 on the twentieth day before the opening of the candidate filing period for the next regularly scheduled election held after the date the political party failed to continue its legal status as provided in G.S. 163-97.

(d) The State Board shall order the county boards of elections to change the registration affiliation of all voters who are recorded on the registration books as being affiliated with an expired political party at 5:00 p.m. on the 20th day before the opening of the candidate filing period for the next regularly scheduled election held after the date of expiration. Upon making the change, the county board of elections shall send each affected voter verification of the party change by mail in accordance with G.S. 163-82.17(b). However, an expired political party that submits to the State Board one of the following prior to noon on the twentieth day before the opening of the candidate filing period for the next regularly scheduled election held after the date of expiration shall not have its affiliated voters changed to "unaffiliated designation":

- (1) A petition approved pursuant to G.S. 163-96(a)(2). The political party shall comply with all other petition processes and deadlines in G.S. 163-96(a)(2), (b), and (c), including submitting the signatures to each county board of elections no later than 5:00 p.m. on the 15th day preceding the date the petitions are due to be filed with the State Board as provided in this Paragraph; or
- (2) Documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least 70 percent of the states in the prior presidential election.

(e) For purposes of this Rule, "expired political party" means a party that failed to continue its legal status as provided in G.S. 163-97.

(f) Documentation required under G.S. 163-96(a)(3) for the creation of a political party and under Subparagraph (d)(2) of this Rule for the reinstatement of an expired political party shall include any official State or federal government source, including official election results or statistics from a state or federal government website or publication.

History Note: Authority G.S. 163-22; 163-97.1; Eff. September 1, 2021.

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount and describe to them the process of conducting recounts. A county board of elections shall notice the recount at least 48 hours prior to the start of the recount. The county board shall send notice by email to the county board's regular notice list, county party chairs, and the candidates in the contest subject to the recount.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).

(d) In conducting hand to eye recounts or recounts of paper ballots, a bipartisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) each separately recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally." If, after diligently seeking to fill the positions with voters affiliated with each of the two parties in the State with the largest number of registered voters, the county board still has an insufficient number of officials for the recount, the county board by a majority vote of its members, including at least one board member of each political party represented on the board, may appoint to the bipartisan team an unaffiliated voter or voter affiliated with one of the other political parties. In no instance shall the county board appoint more than two members to a bipartisan team who are unaffiliated or affiliated with one of the other political parties. Bipartisan team members shall be registered voters in the State. County board members shall not serve on the bipartisan team.

(e) The county board of elections shall conduct recounts only as follows:

- (1) the recount is mandatory under G.S. 163-182.7(b) or (c) or G.S. 163-182.7A; or
- (2) the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

(f) A candidate shall have the right to call for a hand-eye recount within 24 hours after a discretionary recount in G.S. 163-182.7(a) or by noon on the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the discretionary recount. A candidate shall have the right to call for a hand-eye sample recount within 24 hours after a mandatory machine recount, pursuant to G.S. 163-182.7A.

(g) Any candidate shall have the right to file an election protest within 24 hours after a recount is completed or by noon of the next

business day of the county board office, whichever is later, if the protest relates to the conduct of the recount. Allegations unrelated to the recount may not be included in the protest.

(h) Recounts shall be performed in the presence of a quorum of county board members or in the presence of a bipartisan team of two county board members. Determinations of voter intent shall be made by a quorum of the board and at least one board member of each political party shall be represented.

History Note: Authority G.S. 163-22; 163-182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004; Readopted Eff. June 1, 2019; Amended Eff. September 1, 2021.

08 NCAC 09 .0107 FIRST RECOUNT

In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted shall be counted again by machine. All ballots that are rejected for tabulation purposes by the machines shall be recounted by a bi-partisan team of four in accordance with 08 NCAC 09. 0106(d) or duplicated and counted by machine. Ballots accepted by the machines shall not be counted by hand, regardless of whether the ballot is marked, contains overvotes, or is blank.

History Note: Authority G.S. 163-22; 163-182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004; Readopted Eff. June 1, 2019; Amended Eff. September 1, 2021.

08 NCAC 09 .0108 RECOUNT OF DIRECT RECORD ELECTRONIC VOTING MACHINES

History Note: Authority G.S. 163-22; 163-182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004; Readopted Eff. June 1, 2019; Repealed Eff. September 1, 2021.

08 NCAC 09 .0109 GUIDELINES FOR DETERMINING VOTER INTENT

(a) As provided in G.S. 163-182.1(a), voter intent is the governing standard when questions arise about how to adjudicate markings on a ballot. Questions about voter intent may arise during a hand-to-eye recount if a voter marks the ballot in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise marks the ballot in a manner that causes the voter's choice to be in dispute. Determinations of voter intent shall be made by the county board. If the bipartisan team of four provided for in 08 NCAC 09 .0106(d) encounters a ballot that cannot be clearly identified as a vote for one candidate or another, the ballot must be set aside. During a hand-to-eye audit or recount, all ballots with a potential overvote or undervote shall be adjudicated by the county board at the conclusion of the tallying by the bipartisan team. If the subject to the recount was left blank—meaning there are no marks in the target or candidate area for the contest—the county board shall not need to determine

voter intent and the ballot shall not be counted for any candidate in that contest.

(b) For purposes of this Rule, the following definitions apply:

- (1) "Target area" is the square or oval next to the candidate's name on the printed ballot.
- (2) "Candidate area" is the area between the lines separating candidate names, or the area that is clearly closer to one candidate's name than another, and includes the candidate's name and party affiliation, if listed.

(c) For any printed ballot that is to be counted hand-to-eye, the following guidelines shall be used in determining voter intent:

- (1) Any ballot that is properly marked in the target area for one candidate only shall be designated as a vote for that candidate.
- (2) If the names of all but one candidate are stricken through, the ballot shall be counted for the one candidate whose name was not stricken through.
- (3) If there are identical marks for two or more candidates, clarified by an additional or different mark or marks that appear to indicate support for one candidate, the ballot shall be counted as a vote for the candidate with the additional or different marks.
- (4) Any ballot that has any other mark or marks in the target area or candidate area for one candidate only, including circling the target area, the candidate's name, or both, or making a mark in or around the target area or candidate's name, provided no other candidate for that office is similarly marked, shall be counted as a vote for that candidate.
- (5) Any ballot that has a mark or marks in the target area or candidate area for one candidate, which extends partially into one or more other target areas or candidate areas, shall be counted as a vote for the candidate so marked only if a majority of the mark is in that candidate's area or target area, it is readily apparent that the voter intended to vote for that candidate, and no other candidate is similarly marked.
- (6) Marks extending across more than one candidate's area may be counted if the lines of the "x" or the bottom point of the check mark clearly lie inside the box or on top of the name or party affiliation or candidate area of one candidate, and no other candidate is similarly marked.
- (7) Any ballot that has a mark in the target area or candidate area for one candidate, and on which other marks in the target areas or candidate areas for any other candidates have been partially erased, scratched out, or otherwise obliterated, shall be counted as a vote for the candidate for which the mark was not erased, scratched out, or otherwise obliterated, provided no other candidate is similarly marked.

- (8) Any ballot that has a mark that is clearly next to (either before or after) a candidate's name, or across the name, shall be recognized as a mark for that candidate. Similarly, a mark between or over the "timing marks" of the ballot, that are clearly opposite or next to one candidate's name and not near another candidate's name, shall be recognized as a mark.
- (9) A mark that is between or across more than one candidate's name, candidate area, or target area shall not be recognized as a vote.
- (10) Any writing or comment on the ballot (other than a write-in) that clearly indicates the voter's support for one and only one candidate for the office, and that cannot be interpreted as a comment in favor of any other candidate in that election, shall be counted as a vote for that candidate.
- (11) Any ballot that is marked for more than one candidate for the office shall be deemed an overvote and no vote shall be counted for that ballot item.
- (12) Any ballot on which there is no mark under the office, or any other mark or comment indicating support for a candidate for the office, is an undervote and shall not be counted as a vote for any candidate.
- (13) A mark that is clearly a negative or extraneous comment, or that indicates the voter's opposition to one or more candidates, shall be considered an undervote, provided the ballot is not so marked to indicate which candidate the voter supports.
- (14) If a substantial part of the candidate's name is crossed through or stricken out, the mark shall be considered an undervote and shall not be counted.

Examples of these guidelines applied to ballot markings are located in Numbered Memo 2020-32 on the State Board of Elections' website, <http://www.ncsbe.gov>.

History Note: Authority G.S. 163-22; 163-182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004; RRC Objection August 16, 2018 and rule returned to agency on June 1, 2019; Amended Eff. September 1, 2021.

08 NCAC 20 .0101 ELECTION OBSERVERS

(a) Observer Lists. The chair of each political party in a county may designate two precinct-specific observers to attend each voting place on Election Day and each one-stop site during a primary or general election in accordance with this Rule. The precinct-specific observer list may include up to eight names and shall include the times that each observer shall serve. The county party chair may designate 10 additional at-large observers who may attend any voting place in the county. The list of observers

for one-stop must designate the names of the observers who will be present on each day of early voting and, for precinct-specific observers, at each one-stop site. At-large observers may serve at any one-stop site. The chair of each State political party may designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.

(b) **Submission of Lists.** The county party chair shall submit a written, signed list of county at-large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The county party chair shall submit the list of observers for one-stop before 10:00 a.m. on the fifth day before the observer is to observe. The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers. The list of at-large observers who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at-large observer is to observe. The list of precinct-specific observers to serve on Election Day may not be amended after 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall submit the written, signed list of State at-large observers by 10:00 a.m. on the fifth day prior to Election Day to the State Board, which shall disseminate the list to the county boards of elections. The list shall include the full name of each at-large observer and the county in which the observer is registered. The State Board shall confirm that each State at-large observer is a registered voter of the State. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned signatures are permissible.

(c) **Observers at Voting Place.** No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours; however, the total number of observers from each party cannot exceed three total observers in the voting enclosure at one time: two precinct-specific observers and one county or State at-large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.

(d) **Observer Conduct.** Observers who engage in prohibited conduct after receiving a warning may be required by the chief judge to leave the voting enclosure. Prohibited activities by observers include:

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;

- (3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; and
- (8) Providing voter assistance.

(e) **Eligibility.** No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.

(f) **Observers for unaffiliated candidates.** An unaffiliated candidate or the candidate's campaign manager may appoint two observers at each voting place as set forth in this Rule.

(g) The use of the term "chief judge" includes one-stop site managers.

*History Note: Authority G.S. 163-22; 163-45; 163-166.6; 163-166.7;
Eff. October 1, 2018;
Amended Eff. September 1, 2021.*

08 NCAC 21 .0102 REPORTING OF INDEPENDENT EXPENDITURES

(a) Once an individual as defined in G.S. 163-278.6(55), person as defined in G.S. 163-278.6(72), or other entity required to report independent expenditures under G.S. 163-278.12(a) has made independent expenditures with a present actual or market value in excess of one hundred dollars (\$100.00) during an election as defined in G.S. 163-278.6(30), the individual, person, or entity shall report all independent expenditures, and any donations made to further independent expenditures, with the following board of elections:

- (1) if the district of the candidate or ballot issue supported or opposed is within one county, and the candidate is not running for a legislative, judicial, or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate or ballot issue supported or opposed extends to more than one county, or the candidate is running for a legislative, judicial, or district attorney office, the report shall be filed with the State Board.

(b) An independent expenditure filer is the individual, person, or other entity making a reportable independent expenditure under

G.S. 163-278.12(a). If the independent expenditure filer is an individual, the individual shall sign all reports. If the independent expenditure filer is a person or other entity, an authorized officer or an authorized representative of the person or entity shall sign all reports.

(c) The independent expenditure filer shall file CRO-2210A Independent Expenditure Report Cover, CRO-2210B Donations to Further Independent Expenditures, and CRO-2210C Incurred Costs of Independent Expenditures available on the State Board's website, <http://www.ncsbe.gov>, unless the independent expenditure filer files reports electronically consistent with 08 NCAC 21 .0106. Independent expenditure reports filed with the county board of elections or the State Board shall include all of the following:

- (1) the independent expenditure filer's name and mailing address;
- (2) a phone number for the independent expenditure filer;
- (3) if the independent expenditure filer is an individual, the filer's principal occupation as defined in G.S. 163-278.11(a)(1);
- (4) if the independent expenditure filer is a person or entity, the principal place of business of the person or entity;
- (5) for each independent expenditure made:
 - (A) The name and mailing address of the payee;
 - (B) The amount paid;
 - (C) The date the expenditure was incurred;
 - (D) A description of the expenditure; and
 - (E) The name of the candidate, candidates of an identified political party, or referendum supported or opposed by the independent expenditure;
- (6) for each donation of more than one hundred dollars (\$100.00) that must be reported under G.S. 163-278.12(f):
 - (A) the donor's name and mailing address;
 - (B) if the donor is an individual, the donor's principal occupation as defined in G.S. 163-278.11(a)(1);
 - (C) if the donor is a person or entity, the principal place of business of that person or entity;
 - (D) the amount of the donation; and
 - (E) the date of the donation; and
- (7) a certification as to whether any expenditures reported were made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee as defined in G.S. 163-278.38Z(3), a referendum committee, the agent of a candidate, the agent of a candidate campaign committee, or an agent of a referendum committee.

(d) An independent expenditure filer that makes expenditures with a present, actual, or market value in excess of five thousand dollars (\$5,000.00) during an election as defined in G.S. 163-278.6(30) shall file independent expenditure reports electronically consistent with 08 NCAC 21 .0106.

(e) For each independent expenditure report filed electronically, the individual or an authorized officer or an authorized representative of the independent expenditure filer shall sign the Independent Expenditure Report Cover and the independent expenditure filer shall file the signed original in accordance with Paragraph (g) of this Rule with the board of elections identified in Paragraph (a) of this Rule.

(f) The independent expenditure filer shall complete and file forms within the time period set forth in G.S. 163-278.12(d). An independent expenditure filer that makes a reportable independent expenditure within 10 days of an election, and has not previously reported independent expenditures during the election the independent expenditure affects, shall file reports no later than the 10th day after independent expenditures exceed one hundred dollars (\$100.00). After the initial report, the independent expenditure filer shall continue to file independent expenditure reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election. If the independent expenditure filer makes independent expenditures in support of or in opposition to municipal candidates or municipal ballot issues, the independent expenditure filer shall report all independent expenditures according to the reporting schedule in Part 2 of Article 22A of Chapter 163 of the General Statutes.

(g) A report is considered filed either:

- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections;
- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4; or
- (3) for an independent expenditure report filed electronically pursuant to Paragraph (d) of this Rule, on the date the completed report is emailed to the State Board of Elections at campaign.reporting@ncsbe.gov.

(h) A report that is missing any of the information in Paragraph (c) of this Rule shall not be considered filed in accordance with G.S. 163-278.12(d).

(i) An independent expenditure filer that makes an expenditure of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more before an election but after the period covered by the last report due before that election, shall file a 48-hour report with the State Board or county board of elections using forms available on the State Board's website. An independent expenditure filer that makes a reportable independent expenditure within 10 days of an election, and has not previously reported independent expenditures during the election the independent expenditure affects, shall file 48-hour reports in accordance with this Paragraph. A 48-hour report shall be made using CRO-2210A Independent Expenditure Report Cover, CRO-2210B Donations to Further Independent Expenditures, and CRO-2210C Incurred Costs of Independent Expenditures. 48-hour reports may be filed by fax or email.

History Note: Authority G.S. 163-278.12; 163-278.21; 163-278.22;
Eff. May 1, 2020;

Amended Eff. September 1, 2021.

08 NCAC 21 .0103 REPORTING OF SPECIAL CONTRIBUTIONS

(a) Once a person as defined in G.S. 163-278.6(72) or other entity required to report contributions under G.S. 163-278.12(b) has made contributions with a present, actual, or market value in excess of one hundred dollars (\$100.00) during an election as defined in G.S. 163-278.6(30), the person or entity shall report all contributions made, and any donations made to further contributions, with the following board of elections:

- (1) if the district of the candidate, committee, or ballot issue supported or opposed is within one county, and the candidate is not running for a legislative, judicial, or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate, committee, or ballot issue supported or opposed extends to more than one county, or the candidate is running for a legislative, judicial, or district attorney office, the report shall be filed with the State Board.

(b) A special contributor is the person or other entity making a reportable contribution under G.S. 163-278.12(b). An authorized officer or an authorized representative of the person or entity shall sign all reports.

(c) When reporting contributions, the special contributor shall file CRO-2215A Special Contributor Report Cover, CRO-2215B Donations to Further Contributions, and CRO-2215C Contributions to Registered Committees available on the State Board's website. Special contributor reports filed with the county board of elections or the State Board of Elections shall include all of the following:

- (1) the special contributor's name and mailing address;
- (2) the special contributor's principal place of business;
- (3) for each contribution made;
 - (A) the name and mailing address of the recipient committee;
 - (B) the amount of the contribution;
 - (C) the date of the contribution; and
 - (D) for any in-kind contribution, a description of the expenditure;
- (4) for each donation of more than one hundred dollars (\$100.00) that must be reported under G.S. 163-278.12(f):
 - (A) the donor's name and mailing address;
 - (B) if the donor is an individual, the donor's principal occupation as defined in G.S. 163-2778.11(a)(1);
 - (D) if the donor is a person, the principal place of business of that person;
 - (E) the amount of the donation;
 - (F) the date of the donation;

(d) The special contributor shall complete and file forms within the time period set forth in G.S. 163-278.12(d). A special contributor that makes a reportable contribution within 10 days of

an election, and has not previously reported contributions during that election, shall file reports no later than the 10th day after contributions exceed one hundred dollars (\$100.00). After the initial report, the special contributor shall continue to file special contributor reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election. If the special contributor makes contributions in support of or in opposition to municipal candidates or municipal ballot issues, the special contributor shall report all contributions according to the reporting schedule in Part 2 of Article 22A of Chapter 163 of the General Statutes.

(e) A report is considered filed either:

- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections; or
- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(f) A report that is missing any of the information in Paragraph (c) shall not be considered filed in accordance with G.S. 163-278.12(d).

(g) A special contributor that makes a contribution of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more before an election but after the period covered by the last report due before that election, shall file a 48-hour report with the State Board or county board of elections using forms available on the State Board's website. A special contributor that makes a reportable contribution within 10 days of an election, and has not previously reported contributions during that election, shall file 48-hour reports in accordance with this Paragraph. A 48-hour report shall be made using CRO-2215A Special Contributor Report Cover, CRO-2215B Donations to Further Contributions, and CRO-2215C Contributions to Registered Committees. 48-hour reports may be filed by fax or email.

History Note: Authority G.S. 163-278.12; 163-278.21; 163-278.22;

Eff. May 1, 2020;

Amended Eff. September 1, 2021.

08 NCAC 21 .0104 REPORTING OF ELECTIONEERING COMMUNICATIONS

(a) Once an individual as defined in G.S. 163-278.6(55), person as defined in G.S. 163-278.6(72), or other entity required to report electioneering communications under G.S. 163-278.12C has incurred an expense for the direct cost of producing or airing electioneering communications as defined in G.S. 163-278.6(8j) with a present actual or market value aggregating in excess of five thousand dollars (\$5,000), the individual, person, or entity shall report all electioneering communications, and any donations made to further electioneering communications, with the following board of elections:

- (1) if the district of the candidate referred to is within one county, and the candidate is not running for a legislative, judicial or district

attorney office, the report shall be filed with the county board of elections; or

- (2) if the district of the candidate referred to extends to more than one county, or the candidate is running for a legislative, judicial or district attorney office, the report shall be filed with the State Board.

(b) For an individual required to report electioneering communications, the individual shall sign all reports. For a person or other entity required to report electioneering communications, an authorized officer or an authorized representative of the person or entity shall sign all reports.

(c) The direct cost of producing or airing electioneering communications includes, but is not limited to, the cost of studio rental time; video or audio recording media; staff salaries; consultant fees; talent; airtime on broadcast, cable or satellite radio and television stations; and the charges for a broker to purchase the airtime.

(d) When reporting electioneering communications, the individual, person, or entity shall file CRO-2310 Electioneering Communications Report Cover, CRO-2320 Controlling/Directing Entity List; CRO-2330 Receipts for Electioneering Communications, and CRO-2340 Incurred Costs for Electioneering Communications available on the State Board's website. Electioneering Communication reports filed with the county board of elections or the State Board of Elections shall include all of the following:

- (1) the name and mailing address of the individual, person, or entity incurring the expense;
- (2) a phone number for the individual, person, or entity incurring the expense;
- (3) the name and mailing address of the custodian of the books and accounts of the individual, person, or entity incurring the expense;
- (4) if the expense is incurred by an individual, the individual's principal occupation as defined in G.S. 163-278.11(a);
- (5) if the expense is incurred by a person or entity, the principal place of business of the person or entity;
- (6) if an individual, person, or entity is sharing or exercising direction or control over the activities of the individual, person, or entity incurring the expense with regards to the electioneering communication:
 - (A) the name and mailing address of the individual, person or entity sharing or exercising direction or control;
 - (B) if an individual, the individual's principal occupation as defined in G.S. 163-278.11(a)(1); and
 - (C) if a person or entity, the principal place of business of the person or entity;
- (7) for each electioneering communication reported:
 - (A) the name and mailing address of each individual, person or entity paid to produce the electioneering communication;

- (B) the amount paid to each individual, person or entity to produce the electioneering communication;
- (C) the date of the electioneering communication;
- (D) a description of the electioneering communication, including any title; and
- (E) the name of the candidate or candidates referred to in the electioneering communication;

- (8) for each donation of more than one thousand dollars (\$1,000) during the reporting period made to further the electioneering communication:

- (A) the donor's name and mailing address;
- (B) if the donor is an individual, the individual's principal occupation as defined in G.S. 163-278.11(a)(1);
- (C) if the donor is a person or entity, the principal place of business of the person or entity;
- (D) the amount of the donation; and
- (E) the date of the donation.

(e) The individual, person, or entity required to report electioneering communications shall file the forms within the time period set forth in G.S. 163-278.12C(b). After the initial report, the individual, person, or entity incurring the expense shall continue to file electioneering communications reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election.

(f) A report is considered filed either:

- during regular business hours at the county board of elections or State Board of Elections; or
- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(g) A report that is missing any of the information in Paragraph (c) shall not be considered filed in accordance with G.S. 163-278.12C.

(h) A 48-hour report shall be filed with the State Board of Elections or county board of elections using forms provided by the State Board if an individual, person or entity that produces or airs an electioneering communication incurs an expense of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more for making an electioneering communication before an election but after the period covered by the last report due before that election. A 48-hour report shall be made using CRO-2310 Electioneering Communications Report Cover, CRO-2320 Controlling/Directing Entity List, CRO-2330 Receipts for Electioneering Communications, and CRO-2340 Incurred Costs for Electioneering Communications. 48-hour reports may be filed by fax or email.

*History Note: Authority G.S. 163-278.12C; 163-278.21; 163-278.22;
Eff. May 1, 2020;*

Amended Eff. September 1, 2021.

08 NCAC 21 .0107 ELECTRONIC SIGNATURE

Any political committee, referendum committee, or other filer authorized to submit reports, disclosures, or certifications consistent with 08 NCAC 21 .0106 may use an electronic signature permissible under G.S. 66-58.5.

History Note: Authority G.S. 163-278.9; 163-278.21; Eff. September 1, 2021.

08 NCAC 21 .0202 PROCEDURES FOR CLOSING A COMMITTEE

(a) A political committee as defined in G.S. 163-278.6(74) may close and cease filing reports according to the schedules set forth in G.S. 163-278.9 or Article 22A, Part 2 if it stops receiving contributions or making expenditures and disposes of all assets and liabilities. In order to close, a political committee shall file all of the following with the board of elections:

- (1) a certification that the political committee intends to close and cease existence and that all assets have been disposed of and reported; and
- (2) a Final Report setting forth the information in G.S. 163-278.11 and covering the period since the last report filed under G.S. 163-278.9 or Article 22A, Part 2. The Final Report shall disclose no cash on hand at the end date of the reporting period; no outstanding loans, and no outstanding debts and obligations owed by the political committee.

(b) A political committee that qualifies under threshold in accordance with G.S. 163-278.10A shall only file a certification as described in Subparagraph (a)(1) of this Rule.

(c) A political committee shall file the certification and Final Report by filing forms available on the State Board of Elections website with the board of elections. The certification and Final Report are considered filed:

- (1) on the date received by hand-delivery during regular business hours at the board of elections;
- (2) on the date postmarked by the United States Postal Service or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(d) Notwithstanding Paragraph (c) of this Rule, a political committee required to file reports electronically pursuant to G.S. 163-278.9(i) shall complete and file a Final Report consistent with 08 NCAC 21 .0106. All other political committees may elect to file a Final Report consistent with 08 NCAC 21 .0106.

(e) If the political committee is required to file a Final Report, the certification in Subparagraph (a)(1) of this Rule shall be filed within 15 calendar days of the Final Report.

(f) Upon receipt of the certification and Final Report, a political committee that is eligible to close under G.S. 163-278.6(74) and this Rule shall be placed in "closed pending" status. A political committee that is closed pending is not required to file reports under G.S. 163-278.9 or Article 22A, Part 2. A political committee that is closed pending shall continue to preserve records consistent with G.S. 163-278.35. The political committee shall be closed after the board of elections completes a final

examination of the political committee's reports under G.S. 163-278.24 and all potential prohibited transactions under Articles 22A and 22M of Chapter 163 of the General Statutes are resolved and all amended reports are filed. The State Board may order a committee closed that has not resolved potential prohibited transactions or filed amended reports.

(g) A candidate committee shall not close after the candidate supported files a notice of candidacy, or the candidate's name has been placed on the general election ballot pursuant to G.S. 163-122. A candidate committee may close after the candidate supported withdraws as a candidate pursuant to G.S. 163-106.4 or after the certificate of nomination or election is issued under G.S. 163-182.15.

(h) A political committee shall not close if:

- (1) the political committee has failed to file a report required by G.S. 163-278.9 or Article 22A, Part 2; or
- (2) the political committee has a penalty assessed under G.S. 163-278.34 that remains unpaid within three years of the date the assessment was due. A political committee may close after the State Board waives a penalty under G.S. 163-278.34.

(i) A closed or closed pending political committee may re-open at any time. A committee shall be re-opened upon receipt of an Organizational Report as described in G.S. 163-278.9(a)(1). A political committee shall be assigned the same ID Number issued by the board of elections upon re-opening.

History Note: Authority G.S. 163-278.21; Eff. September 1, 2021.

08 NCAC 21 .0203 CERTIFICATION OF THRESHOLD

(a) A political committee that intends to stay within the threshold in G.S. 163-278.10A for a subsequent election cycle shall file a certification with the board of elections according to the following schedule:

- (1) for a candidate committee with an election cycle ending on December 31 of an odd-numbered year, by January 31 of the next even-numbered year.
- (2) for a candidate committee with an election cycle ending on December 31 of an even-numbered year, by January 31 of the next odd-numbered year.
- (3) for a political party committee or affiliated party committee with an election cycle ending on December 31 of an even-numbered year, by January 31 of the next odd-numbered year.

(b) A political committee that fails to file the certification by the due date in Paragraph (a) of this Rule, shall be responsible for filing all reports required in G.S. 163-278.9 or G.S. 163-278.40B, G.S. 163-278.40C, G.S. 163-278.40D, or G.S. 163-278.40E for the subsequent election cycle.

History Note: Authority G.S. 163-278.10A; 163-278.21; Eff. September 1, 2021.

08 NCAC 21 .0401 EXAMINATIONS BY STATE BOARD OF ELECTIONS

(a) After completing an examination of reports for a given period, State Board staff shall submit in writing to the treasurer any requests to inspect detailed accounts, requests to inspect bank records, including checks or other written verifications of payment, or other questions related to a report's conformance to Article 22A, Article 22M, or to the truth, as set forth in G.S. 163-278.24. If a candidate committee, a copy of the correspondence shall also be submitted in writing to the candidate. The treasurer or assistant treasurer shall respond with the requested records or written answers to questions within 15 business days. An extension of time may be granted for good cause. To obtain an extension of time, the treasurer or assistant treasurer shall submit the request in writing within 15 business days of receiving the request for records or written answers. For purposes of this Rule, "good cause" exists when:

- (1) there is a death in the family of the candidate, treasurer, assistant treasurer, or custodian of books;
- (2) the candidate, treasurer, assistant treasurer, or custodian of books, or someone in his or her family, is ill or hospitalized;
- (3) the candidate, treasurer, assistant treasurer, or custodian of books is unable to provide a timely response due to a State-declared natural disaster;
- (4) there is any change in the name, address or email address of the treasurer within 10 calendar days preceding the submission of the written requests or questions: or
- (5) due to the complexity of the response required, State Board staff determines additional time is necessary for the committee to provide a sufficient response.

(b) State Board staff shall submit any subsequent requests to inspect detailed accounts, requests to inspect bank records, or other questions in writing to the treasurer. For each subsequent submission of requests or questions, the treasurer or assistant treasurer shall respond within 15 business days. An extension of time may be granted for good cause consistent with Paragraph (a) of this Rule.

(c) After the expiration of time for all requests and questions in Paragraphs (a) and (b) of this Rule, State Board staff shall prepare a draft examination memorandum. The draft examination memorandum shall set forth any potential prohibited transactions, reporting errors, or informational items identified by State Board staff during the examination. The draft examination memorandum shall include any recommendations for corrective actions and requests that the committee amend any reports. A copy of the draft examination memorandum shall be submitted in writing to the treasurer. If a candidate committee, a copy of the draft examination memorandum shall also be submitted in writing to the candidate. The treasurer or assistant treasurer shall respond in writing within 20 business days.

(d) After the expiration of time in Paragraph (c) of this Rule, State Board staff shall finalize the examination memorandum. State Board staff shall note any amended reports filed by the treasurer prior to the expiration of time in Paragraph (c) of this Rule. State

Board staff shall publish a copy of the final examination memorandum and a copy of any written response provided by the treasurer or assistant treasurer on the State Board of Elections website.

(e) Any day that the State Board of Elections office is closed shall not be counted as a business day for the purpose of this Rule.

(f) This Rule shall not apply to any examination by a county board of elections of a committee that files reports with the county board of elections.

History Note: Authority G.S. 163-278.8; 163-278.21; Eff. September 1, 2021.

08 NCAC 21 .0501 BILLBOARDS

For the purpose of Chapter 163, Article 22A, Part 1A, a "billboard" is any sign, flat surface, or other display greater than 50 square feet. This definition shall not include flags or banners.

History Note: Authority G.S. 163-278.21; 163-278.39; Eff. December 1, 2021.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

**10A NCAC 71K .0101 METHODS OF PROVISION
10A NCAC 71K .0102 FREEDOM OF CHOICE**

History Note: Authority G.S. 143B-153; Eff. April 1, 1978; Repealed Eff. August 1, 2021.

10A NCAC 71L .0101 NATURE AND SCOPE

(a) "Application for State Maternity Fund" Form DSS-6187, which may be accessed at <https://policies.ncdhhs.gov/divisional/social-services> for an individual needing out-of-home care during pregnancy must be submitted by a county department of social services or a North Carolina licensed private adoption agency to the North Carolina Division of Social Services for review and approval.

(b) The State Maternity Fund may assist with residential housing costs for up to 183 days, including up to two weeks of post-partum care for the mother only.

(c) The State Maternity Fund shall not be utilized for hospitalization and delivery services or other medical services. All medical services for State Maternity Fund clients residing in alternate living arrangements must be provided through other resources.

(d) The State Maternity Fund may be used to pay for residential care for a pregnant minor who is in the protective custody of a county department of social services when the minor is placed in a facility that is not approved to receive foster care funds.

(e) Living arrangements for which State Maternity Fund payments may be utilized to pay for the cost of residential care include:

- (1) A maternity home licensed by or meeting the maternity home standards of the State of North Carolina;

- (2) A foster family home for children licensed in North Carolina and used in accordance with the license issued for that home;
- (3) The home of a non-legally responsible relative in North Carolina jointly approved for a specific client by the North Carolina Division of Social Services and the agency requesting State Maternity Fund payments; or
- (4) For individuals 18 and over, a boarding arrangement in North Carolina jointly approved for a specific client by the North Carolina Division of Social Services and the referring agency.

*History Note: Authority G.S. 143B-153;
Eff. April 1, 1978;
Amended Eff. July 1, 1990; January 1, 1983;
Readopted Eff. September 1, 2021.*

10A NCAC 71L .0102 APPROVAL CRITERIA

- (a) A county department of social services or a North Carolina licensed private adoption agency shall provide information, develop a service plan, and coordinate services for pregnant clients for whom they are requesting State Maternity Fund payments.
- (b) Marital status and age shall not affect eligibility for State Maternity Fund payments.
- (c) The client must be a resident of the State of North Carolina to be eligible for State Maternity Fund payments.
- (d) State Maternity Fund payments shall supplement any other funds available from applicants, county departments of social services, families or private agencies. The agency requesting State Maternity Fund payments must review all financial resources available to the client. The agency must establish that resources available to the client are not adequate to meet residential costs.
- (e) State Maternity Fund payments to licensed maternity homes is based on the actual per diem cost of care. A maternity home shall maintain a valid maternity home license for a consecutive one year period and submit an audited financial statement to the North Carolina Department of Health and Human Services, Controller's Office (2019 Mail Service Center, Raleigh, NC 27699-2019) before the per diem rate is assigned. A licensed maternity home is eligible for reimbursement from maternity home funds in the second year of operation if this criteria is met and maternity home funds are available.
- (f) State Maternity Fund payments for care in a foster home is the North Carolina standard board rate for foster care assistance set by the General Assembly.
- (g) State Maternity Fund payments for care in the home of a non-legally responsible relative or in a boarding arrangement shall be the same as the North Carolina standard board rate for foster care assistance.

*History Note: Authority G.S. 143B-153;
Eff. April 1, 1978;
Amended Eff. November 1, 2009; July 1, 1990; January 1, 1983;
Readopted Eff. September 1, 2021.*

10A NCAC 71L .0103 APPLICATION PROCESS

(a) County departments of social services and North Carolina licensed private adoption agencies shall submit applications on behalf of an eligible individual for the State Maternity Fund in writing on the "Application for State Maternity Fund" Form DSS-6187, which may be accessed at <https://policies.ncdhhs.gov/divisional/social-services>. The original must be submitted to the State Maternity Fund Coordinator, Family Support and Child Welfare Services Section, Division of Social Services and shall include the following information:

- (1) the reasons the client cannot remain in her own home (own home includes a foster care facility in which a child resides);
- (2) a description of the client's financial resources;
- (3) household gross monthly income(s), names and ages of other minor children in household, and statement of US citizenship or immigration status;
- (4) a description of the recommended living arrangement and why it is appropriate;
- (5) the proposed plan of services for the biological parents and the child;
- (6) an explanation of why the necessary services cannot be obtained for the client in a community-based living arrangement;
- (7) a tentative agreement to accept the client by the individual responsible for maintaining the recommended living arrangement; and
- (8) the anticipated date of admission and the expected date of delivery (month, day, and year for both).

(b) Applications shall not be delayed because the actual admission date has not been confirmed. The service agency must notify the North Carolina Division of Social Services when the admission date is confirmed so that review and action on the application can be completed. Incomplete applications will not be processed.

(c) Applications that do not contain all information required by this Rule shall not be processed.

(d) Funds shall not be approved to offset residential costs incurred prior to the North Carolina Division of Social Services' receipt of the actual application with original signatures.

(e) Upon receipt of notice that funds have been approved, unless the placement is to be in a licensed maternity home, the agency requesting funds must negotiate with the individual responsible for maintaining the living arrangement a written agreement setting out mutually agreed upon responsibilities.

(f) Payments shall not exceed the amount initially approved.

*History Note: Authority G.S. 143B-153;
Eff. April 1, 1978;
Amended Eff. January 1, 1983;
Readopted Eff. September 1, 2021.*

10A NCAC 71L .0104 ADDITIONAL REQUIREMENTS FOR THE PRIVATE AGENCY

History Note: Authority G.S. 143B-153;

Eff. April 1, 1978;

Amended Eff. January 1, 1983; March 1, 1982;

Repealed Eff. August 1, 2021.

10A NCAC 71L .0105 PROCEDURE FOR APPROVAL AND PAYMENT

(a) All State Maternity Fund forms, correspondence, and monthly billing statements shall be addressed to the State Maternity Fund Coordinator, whose contact information can be found on the "Application for State Maternity Fund" Form DSS-6187, which may be accessed at <https://policies.ncdhhs.gov/divisional/social-services>.

(b) Upon receipt of a completed "Application for State Maternity Fund" Form DSS-6187, the North Carolina Division of Social Services shall make a decision regarding approval for State Maternity Fund payments and the recommended type of living arrangement per the application. Notice of action taken shall be communicated to the county department of social services or to the private adoption agency submitting the application with a copy routed to the applicable maternity home, or the approved living arrangement.

(c) County departments of social services and North Carolina licensed private adoption agencies shall submit notification to the Division of Social Services when the client is admitted to or discharged from the approved living arrangement.

(d) If the approved living arrangement is other than a maternity home, the service agency shall submit a completed copy of the "State Maternity Fund Residential Care Provider Agreement" Form DSS-6189 negotiated with the individual responsible for maintaining the living arrangement, to the North Carolina Division of Social Services before payment may be made to the residential care provider.

(e) At the end of each month the State Maternity Fund Coordinator will generate a monthly reimbursement worksheet for each maternity home or alternate living arrangement. An authorized individual from the maternity home or authorized living arrangement shall review, correct, and certify information reported. The authorized individual shall then mail the worksheet to the North Carolina Division of Social Services for a signature by the State Maternity Fund Coordinator for approval and submission to the North Carolina Department of Health and Human Services Controller's Office (2019 Mail Service Center, Raleigh, NC 27699-2019).

History Note: Authority G.S. 143B-153;

Eff. April 1, 1978;

Amended Eff. January 1, 1983;

Readopted Eff. September 1, 2021.

10A NCAC 71L .0106 DEVELOPMENT OF SERVICE PLAN

(a) The Pregnancy Services caseworker shall complete a needs assessment. If during the process of assessing the needs of a pregnant minor, abuse or neglect is suspected, the Pregnancy Services caseworker shall notify the agency's Child Protective Services Unit. After the assessment is completed, the caseworker and the client shall jointly finalize a specific plan for services, building in time frames for action and identifying channels for accessing resources to be provided by outside agencies.

(b) The service agency's plan for providing services to the client and her child shall be transmitted to the North Carolina Division of Social Services as part of the "Application for State Maternity Fund" Form DSS-6187, which may be accessed at <https://policies.ncdhhs.gov/divisional/social-services>.

(c) As needed and appropriate, the plan shall address the following:

- (1) Counseling needs;
- (2) Medical Care;
- (3) Medical Assistance;
- (4) Nutritional Needs;
- (5) Residential or Housing needs;
- (6) Educational needs;
- (7) Employment Training;
- (8) Parenting Education;
- (9) Financial planning;
- (10) Child Care; and
- (11) Family Planning.

(d) While the client is in residential care, the supervising agency shall maintain contact with the client.

History Note: Authority G.S. 143B-153;

Eff. September 1, 2021.

10A NCAC 71L .0107 ASSESSING THE APPROPRIATENESS OF ALTERNATIVE TYPES OF LIVING ARRANGEMENTS FOR INDIVIDUAL CLIENTS

(a) The Pregnancy Services caseworker shall evaluate the appropriateness of any community living arrangement based upon the aspects set forth in Paragraph (c) of this Rule for which the State Maternity Fund is requested, whether it is a boarding arrangement, the home of a non-legally responsible relative, or a licensed family foster home.

(b) When residential care in a family foster home is being considered for a minor, the Pregnancy Services caseworker shall request the assistance of the Foster Care Services staff in determining whether a home is available, and complete an assessment of the placement for the pregnant client and for all other persons residing in the home. A decision shall be reached by the Foster Care worker and the Pregnancy Services caseworker as to the individual assuming responsibility for case management.

(c) The following aspects of a community living arrangement shall be explored in determining the appropriateness for individual placements:

- (1) Location and surroundings;
- (2) Physical environment;
- (3) Emotional environment;
- (4) Stability of living arrangement; and
- (5) Emergency transportation.

(d) Living arrangements for an expectant mother for whom the State Maternity Fund is being requested shall be selected on the basis of an assessment of the client's individual circumstances and service needs.

History Note: Authority G.S. 143B-153;

Eff. September 1, 2021.

10A NCAC 710 .0101 SERVICES AVAILABILITY
10A NCAC 710 .0102 SERVICE GOALS
10A NCAC 710 .0103 METHODS OF SERVICE
PROVISION

History Note: Authority G.S. 143B-153;
Eff. March 22, 1980;
Amended Eff. May 1, 1990; January 1, 1983;
Repealed Eff. September 1, 2021.

10A NCAC 710 .0104 ELIGIBILITY

(a) For purposes of this Subchapter, 8 U.S.C. 1522, 45 CFR 400.5, 45 CFR 400.154, 45 CFR 400.155, and 45 CFR 400.156 are hereby incorporated by reference including any subsequent amendments and editions, and may be accessed at www.gpo.gov or www.congress.gov at no charge.

(b) For purposes of assistance and services as set forth in 8 U.S.C. 1522, the individual:

- (1) must be a Refugee, admitted under INA 207;
- (2) Asylees, granted asylum under INA 208;
- (3) Cuban and Haitian Entrants, as defined under federal regulations (45 CFR 401.2);
- (4) Certain Amerasians; Trafficking Victims who have been issued an Office of Refugee Resettlement certification letter;
- (5) Special Immigrant Visa holders from Iraq and Afghanistan; or
- (6) Legal Permanent Residents (LPR) who were admitted originally as one of the previous statuses.

(c) The State Division of Social Services, through its State Refugee Office, is the State agency responsible for funding and the development of a State Plan for refugee assistance and services, pursuant to 45 CFR 400.5

(d) Refugee service providers may be public or private, not-for-profit agencies that provide direct services pursuant to 45 CFR 400.154 through 45 CFR 400.156. Eligibility for refugee assistance and services may be determined by county departments of social services, the State Division of Social Services, or by provider agencies from which the Division is purchasing services under a purchase agreement or contract which specifies the provider agency's responsibility for eligibility determination. The agency that determines eligibility shall be responsible for case management for refugee assistance and services and for meeting program requirements for reporting and case documentation.

(e) Refugee service providers shall:

- (1) Provide assistance and services that are defined and designated to facilitate self-support and self-sufficiency;
- (2) Provide assistance and services that are linguistically and culturally appropriate;
- (3) Assist refugees in obtaining the skills to achieve economic self-sufficiency, including job readiness, skills training, vocational education, job placement employment follow-up, and other employment services;
- (4) Provide training in English language instruction;

(5) Provide social adjustment services such as case management, cultural orientation, health management, and support services such as interpretation, translation, and transportation; and

(6) Offer assessment services and development of an individual employability plan as a component of employment services which may be provided without regard to family income to any unemployed refugee who is 16 years of age or older and who is not a full-time student in elementary school or secondary school.

(f) For purposes of determining eligibility, "family" is defined as one or more adults and children, if any, related by blood, or law, and residing in the same household. Emancipated minors and children living under the care of individuals not legally responsible for that care are considered one person families. Where adults reside together, each may be considered a separate family, or all adults, living in the same household may be considered as a family unit, whichever is more beneficial to refugees in determining their eligibility on the basis of family size and income; provided that spouses must be considered a family unit.

History Note: Authority G.S. 143B-153; 8 U.S.C. 1522; 45 CFR 400.5; 45 CFR 400.154; 45 CFR 400.155; 45 CFR 400.156;
Eff. March 22, 1980;
Amended Eff. May 1, 1990;
Readopted Eff. September 1, 2021.

10A NCAC 72 .0102 DEFINITIONS

The following definitions shall apply in this Chapter:

- (1) "Academic Year" means a period of time in which a student completes the equivalent of two semesters or three quarters of academic work.
- (2) "Approved Institution" means one of the branches of the University of North Carolina or one of the North Carolina community colleges.
- (3) "Case Management Services" are a set of services provided to participating students and their families that are designed to support the student's postsecondary education experience. Such services include:
 - (a) processing and accepting applications for the program;
 - (b) certifying each eligible student and the amount of the Eligible Student's Scholarship and communicating this information to the North Carolina State Education Assistance Authority to authorize release of funds;
 - (c) compiling databases of resources in the students' academic communities that can help students succeed in school;
 - (d) providing or arranging for counseling regarding academic issues as well as

- other concerns that may affect the performance of the student;
 - (e) communicating with and advising students on academic issues;
 - (f) providing contact with students throughout their postsecondary experience;
 - (g) responding to students experiencing crisis;
 - (h) providing or arranging for emergency housing up to two weeks for students who have no place to live when school is out of session;
 - (i) if allowed by the student, being available to consult with student's families and staff of local Departments of Social Services regarding student's postsecondary experiences;
 - (j) monitoring grades and the individual's course of study, and evaluating progress toward goal achievement;
 - (k) maintaining records for each individual student regarding their academic progress and assistance provided; and
 - (l) providing quarterly program reports of case management services to the contract administrator at the State Division of Social Services.
- (4) "Cost of Attendance" is defined by the Higher Education Act of 1965, which includes tuition, fees, room, board, supplies, transportation, and personal expenses. This amount is established by each institution. This grant is limited to cost of attendance less other grants or scholarships from federal, state, or other sources.
- (5) "Education Training Voucher" (ETV) means the Federal scholarship program funded by the John Chafee Foster Care Independence Act 42 U.S.C. 677, which benefits individuals who were in the custody of the Department of Social Services at or after age 17 or who were adopted or exited to guardianship on or after their 16th birthday.
- (6) "Eligible Student" means a student who:
- (a) has received a high school diploma or GED and has not yet reached his or her 26th birthday;
 - (b) is pursuing an undergraduate degree, diploma, or certificate at an approved institution as a half-time student or a full-time student, as defined in 34 CFR 668.2;
 - (c) was in the custody of a North Carolina local Department of Social Services on his or her 18th birthday, or adopted from the North Carolina foster care system on or after his or her 12th birthday, or exited foster care to a permanent home through the Guardianship Assistance Program; and
 - (d) is making satisfactory academic progress toward completion of the course of undergraduate study as defined in 34 CFR 668.34.
- (7) "Fiscal Year" means each annual period that begins on July 1 in any calendar year and ends on June 30 the following calendar year.
- (8) "Higher Education Act" means Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070, et seq.
- (9) "Matriculated Status" means the student is recognized by the approved institution as a student in a defined program of study leading to an associate's degree, baccalaureate degree, diploma or certificate.
- (10) "Pell Grant" means the needs based scholarship program administered by the federal government to benefit low income baccalaureate and postgraduate students.
- (11) "Program" means the Postsecondary Educational Support Scholarship program, also known as NC Reach, established by Section 10.34(a) of Session Law 2007-323.
- (12) "Residence Manual" means the most current edition of A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes as adopted by the Board of Governors of the University of North Carolina and available free of charge at https://ncresidency.cfnc.org/residencyInfo/pdf/RDS_Guidebook.pdf.
- (13) "Scholarship" means an award for education awarded to an eligible student under the program.

History Note: Authority G.S. 143B-153; S.L. 2018-5; S.L. 2017-57; 34 CFR 668.34; 34 CFR 677; Eff. June 1, 2008; Readopted Eff. September 1, 2019; Amended Eff. September 1, 2021.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as

defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

- (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance encompassing that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties, terminal groins, and channelization. The areas on the maps identified as Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

- (a) the location of a former inlet which has been closed for at least 15 years;
- (b) inlets that due to shoreline migration, no longer include the current location of the inlet; and
- (c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for

inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
- (b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.
- (c) The Commission designates as temporary unvegetated beach areas those oceanfront areas of:
 - (i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018; and
 - (ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of

Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf and https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip. This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf.

maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following methodology. Initial characterizations of the recipient beach shall serve as the baseline for subsequent beach fill projects:
 - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a cape shoal system, or maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system. For purposes of this Rule, "cape shoal systems" include Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;
 - (b) Sediment sampling and analysis shall be used to capture the spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular transects shall be established for topographic and bathymetric surveying of the recipient beach. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project area with spacing not to exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Elevation data for all transects shall be compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. These Rules are hereby incorporated by reference, including subsequent amendments;
 - (d) Along each transect, at least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998;
Readopted Eff. December 1, 2020;
Amended Eff. September 1, 2021.

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes shall conform to the standards contained in 15A NCAC 07H .0308(b). Sediment used to re-establish state-

- even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
- (e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;
 - (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
 - (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects;
 - (h) The number of sediments greater than or equal to one inch (25.4 millimeters) in diameter, and shell material greater than or equal to three inches (76 millimeters) in diameter shall be differentiated and calculated through visual observation of an area of 10,000 square feet centered on each transect, and between mean tide level (MTL) and the frontal dune toe within the beach fill project boundaries. A simple arithmetic mean shall be calculated for both sediments and shell by summing the totals for each across all transects and dividing by the total number of transects, and these values shall be considered representative of the entire project area, and referred to as the "background" values for large sediment and large shell material;
 - (i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and may use data collected from the recipient beach prior to the addition of beach fill where data are available, and in coordination with the Division of Coastal Management; and
 - (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For the purposes of this Rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
 - (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites may include historical sediment characterization data where available and collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule, and in coordination with the Division of Coastal Management.
 - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent, or the maximum extent practicable as determined in consultation with the Division of Coastal Management, of each submarine borrow site and use survey-grade swath sonar (e.g. multibeam or

similar technologies). Seafloor imaging without an elevation component (e.g. sidescan sonar or similar technologies) shall also cover 100 percent, or the maximum extent practicable, of each site. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. Seafloor imaging data without an elevation component shall also be compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is also not required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system;

- (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be compliant with Standards of Practice for Land

Surveying in North Carolina pursuant to 21 NCAC 56 .1600;

- (e) With the exception of upland borrow sites, sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system, or offshore dredged material disposal site (ODMDS) may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. Because shallow submarine areas completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and shall be evaluated by the Division of Coastal Management on a case-by-case basis;
- (f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness

- of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;
 - (g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and
 - (h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management.
- (3) Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment compatibility shall be determined according to the following criteria:
 - (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system shall be considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
 - (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
 - (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;
 - (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
 - (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
 - (a) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during any seasonal environmental moratoria designated by the Division of Coastal Management in consultation with other State and Federal agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and
 - (b) The total sediments with a diameter greater than or equal to one inch (25.4 millimeters), and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MTL and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 10,000 square feet section of beach within the beach fill project boundaries. In the event that more than twice the background value of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal

Management and other State and
Federal resource agencies.

History Note: Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5); 113A-113(b)(6); 113A-118; 113A-124;
Eff. February 1, 2007;
Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008;
Readopted December 1, 2020;
Amended Eff. September 1, 2021.

**15A NCAC 07J .1201 REQUESTING THE STATIC
LINE EXCEPTION**

(a) A petitioner subject to a static vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission for an exception to the static vegetation line in accordance with the provisions of this Section. A "petitioner" shall be defined as:

- (1) Any local government;
- (2) Any group of local governments involved in a regional beach fill project;
- (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline; or
- (4) A permit holder of a large-scale beach fill project.

(b) A petitioner shall be eligible to submit a request for a static vegetation line exception after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static vegetation line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner, including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static vegetation line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static vegetation line exception request shall be made in writing by the petitioner. A complete static vegetation line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows,

the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre- and post-project surveys and a project footprint; Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 30 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

- (2) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (3) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static vegetation line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static vegetation line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static vegetation line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Amended Eff. April 1, 2016;
Readopted Eff. September 1, 2021.

**15A NCAC 07J .1202 REVIEW OF THE STATIC LINE
EXCEPTION REQUEST**

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

- (1) A description of the area affected by the static line exception request;
- (2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
- (3) A summary of the evidence required for a static line exception; and
- (4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021.*

15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION

(a) At the meeting at which the static line exception is considered by the Coastal Resources Commission, the following shall occur:

- (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.
- (2) A representative for the petitioner may provide written or oral comments about the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.
- (3) Additional parties may provide written or oral comments about the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.

(b) The Coastal Resources Commission shall authorize a static line exception request if the request contains the information required and meets the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021.*

15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide the petitioner with written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

- (1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(1) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
- (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
- (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

- (1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.
- (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.
- (3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021.*

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION

- (a) The static line exception shall be revoked if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4), are not being met.
- (b) The static line exception shall expire at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).
- (c) In the event a progress report is not received by the Division of Coastal Management five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.
- (d) The revocation or expiration of a static line exception shall be a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021.*

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the

Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. March 23, 2009;
Readopted Eff. September 1, 2021.*

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

- (a) Any local government, group of local governments involved in a regional beach fill project, or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission for a development line for the purpose of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association, as defined in G.S. 47F-1-103(3), that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.
- (b) A development line request shall apply to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7) and, at the petitioner's request, may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.
- (c) In determining where to position a requested development line, the petitioner shall use an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction.
- (d) An existing structure that is oceanward of an approved development line may remain in place until damaged greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward of the development line and shall meet the applicable ocean hazard setback requirements as defined in 15A NCAC 07H .0306(a).
- (e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall include the following:

- (1) A detailed survey of the development line using on-ground observation and survey or aerial imagery along the oceanfront jurisdiction or legal boundary, including:
 - (A) The development line, static vegetation line, mean high water line, and any other information necessary

for a review of the petitioner's proposed development line, such as a pre-nourishment project mean high water line, local ordinances, or easements; and

- (B) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;

- (2) All local regulations associated with the development line;
- (3) A record of local adoption of the development line by the petitioner; and
- (4) Documentation of incorporation of a development line into local ordinances or rules and regulations of an owner's association.

(f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a change or reestablishment of the position of the development line.

(g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, unless the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. April 1, 2016;

Amended Eff. September 1, 2017;

Readopted Eff. September 1, 2021.

15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

(a) At the meeting at which the development line request is considered by the Coastal Resources Commission, the following shall occur:

- (1) A representative for the petitioner shall orally present the request described in Rule .1301 of this Section. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations in open session based upon the number of speakers wishing to present.
- (2) Additional persons may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session

based upon the number of speakers wishing to speak.

(b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in Rule .1301 of this Section.

(c) The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(d) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124;

Eff. April 1, 2016;

Readopted Eff. September 1, 2021.

15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

A list of development lines in place for petitioners and any conditions under which the development lines exist in accordance with 15A NCAC 07J .1300, including the date(s) the development lines were approved, shall be maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557, during business hours or on the Division's website nccoastalmanagement.net.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. April 1, 2016;

Readopted Eff. September 1, 2021.

15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY

(a) The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance, and ensure access to the public beaches and waters of the 20-county coastal region as described in G.S. 113A-103(2). The Coastal Resources Commission shall ensure that access is consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.

(b) The State has created the Public Beach and Coastal Waterfront Access Program for the purpose of acquiring, improving, and maintaining waterfront recreational property at intervals throughout the coastal region for public access to these public trust resources as described in G.S. 113A-134.1.

(c) In addition, some properties, due to their location, are subject to severe erosion so that development is not possible or due to the requirements of 15A NCAC 7H .0306. In these cases, a public

purpose as described in G.S. 113A-134.1(b) may be served by the donation or acquisition of these properties for public access.

(d) The primary purpose of the public access program is to provide funds to acquire, develop, or maintain land for public access, including parking as authorized by G.S. 113A-134.3(c). Boating and fishing facilities are eligible for funding under the Public Beach and Coastal Waterfront Access Program provided that pedestrian access is also incorporated in the design of the facility.

History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3;
Eff. March 1, 1979;
Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988;
March 1, 1985; July 1, 1982;
Readopted Eff. September 1, 2021.

15A NCAC 07M .0302 DEFINITIONS

As used in this Section, the Public Beach and Coastal Waterfront Access Program is to provide public access to the public trust beaches and waters as defined in 15A NCAC 07H .0305(a)(1) and 15A NCAC 07H .0207(a) in the 20 coastal counties described in G.S. 113A-103(2).

- (1) "Beach" is defined as described in 15A NCAC 07H .0305(a)(1).
- (2) "Coastal Waterfront Access" includes the acquisition and improvement of properties located in the 20-county area under the Coastal Area Management Act (CAMA) jurisdiction as described in G.S. 113A-103(2) that are adjacent or proximate to coastal waterways to which the public has rights of access or public trust rights.
- (3) "Handicapped Accessible" is defined as meeting the standards of the State Building Code for handicapped accessibility.
- (4) "Improvements" are facilities that are added to promote public access at an access site. Common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks, and foot showers.
- (5) "Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(2).
- (6) "Local Access Sites" include those public access points that offer no facilities. These accessways provide only a dune crossover or pier, if needed, litter receptacles, and public access signs. Vehicle parking is not available at these access sites. However, bicycle racks may be provided by local governments.
- (7) "Maintenance" is the upkeep and repair of public access sites and their facilities in such a manner that public health and safety is ensured. Where the local government uses or has used access funds administered by the Division of Coastal Management (DCM), the local

government shall provide operation and maintenance of the facility for the useful life of that facility as set forth in the individual grant contract.

- (8) "Multi-regional Access Sites" are larger than regional accessways but smaller than State parks. Such facilities may be undertaken and constructed with the involvement and support of State and local government agencies. Multi-regional accessways provide parking for a minimum of 80 vehicles, restrooms with indoor showers and changing rooms, and concession stands.
- (9) "Neighborhood Access Sites" includes those public access areas offering parking for 5 to 25 vehicles, a dune crossover or pier, litter receptacles, and public access signs. Restroom facilities may be installed.
- (10) "Ocean Beach Access" includes the acquisition and improvement of properties adjacent or proximate to the Atlantic Ocean for parking and public passage to the oceanfront.
- (11) "Public Trust Areas" is defined in 15A NCAC 07H .0207(a).
- (12) "Regional Access Sites" are of such size and offer such facilities that they serve the public from throughout an island or community including day visitors. These sites provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles, and public access signs.
- (13) "Urban Waterfront Access Projects" improve public access to deteriorating urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront.

History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. March 1, 1979;
Amended Eff. February 1, 2009; January 1, 1998; March 1, 1988;
March 1, 1985; July 1, 1982;
Readopted Eff. September 1, 2021.

15A NCAC 07M .0303 STANDARDS FOR PUBLIC ACCESS

- (a) Beach nourishment projects undertaken with public funds shall include provisions for public access and parking within the boundaries of the project to achieve public use and benefit of these areas.
- (b) Public access projects funded through the Public Beach and Coastal Waterfront Access Program shall be consistent with public access policies contained in the local government's land use plan as required in 15A NCAC 07B .0702(d)(3)(A) and its local waterfront access plan, or a local recreation plan that addresses public access.

(c) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113A-134.3 may charge user fees as long as those fees are used exclusively for operation and maintenance, or provision of new public access. Local governments shall include biannual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites. Biannual accounting reports shall be submitted to the Director of the Division of Coastal Management by June 30 of the year in which it is due. Accounting reports may be included in Biannual LUP Implementation Status Reports under 15A NCAC 07B .0804.

(d) Land acquired with Public Beach and Coastal Waterfront Access grant funds shall be dedicated in perpetuity for public access and benefit of the general public. The dedication shall be recorded in the property records by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved with access grant funds is sold or otherwise disposed of, the local government shall reimburse the State at a percentage equal to the proportion of access grant funds provided for the original purchase at current market value at the time of sale.

History Note: Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a); Eff. March 1, 1979; Amended Eff. March 1, 1988; March 1, 1985; July 1, 1982; RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991; Amended Eff. February 1, 2009; August 1, 2007; January 1, 1998; March 1, 1992; Readopted Eff. September 1, 2021.

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

(a) Coastal waterfront access in the 20-county coastal region is a concern of local, State, and national importance. Local governments have responsibility for the selection of public access sites within their jurisdiction. Access shall be based on identified needs as stated in land use plans pursuant to 15A NCAC .0702(d)(2)(A) and local waterfront access plans.

(b) A local government may, through its land use plan:

- (1) identify access needs and develop local policy to pursue access funding;
- (2) develop a local access plan; and
- (3) solicit access sites through corporate assistance.

(c) An access plan shall identify needs and opportunities for public access, determine access and facility requirements, establish standards, and develop project design plans or guidelines by site. An access plan shall consider both financial resource availability (such as grants, impact fees, or hotel/motel tax revenues) and construction timing. It shall establish priorities for the development of access plans and devise a system for annual evaluation of the plan.

(d) Local governments may also include provisions in local ordinances that require access for waterfront developments or require payment in lieu of access for non-water dependent subdivisions.

(e) Dedicated street ends may be acceptable for accessways.

(f) The Division of Coastal Management has primary responsibility for administering the Public Beach and Coastal

Waterfront Access Program. Subject to the availability of funds, the Division of Coastal Management shall annually solicit pre-application proposals from local governments and shall select competitive projects for application submittal. Projects from these final applications shall be selected for funding based on criteria in Rule .0307 of this Section.

(g) The Division of Coastal Management may use available funds on a non-competitive basis to plan for and provide public access through acquisition of improvements. Prior to expending funds, the Division of Coastal Management shall hold a public meeting or hearing at a regularly scheduled meeting of the Commission to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission for 60 days prior to the expenditure of non-competitive money by the Division of Coastal Management.

(h) The Division of Coastal Management shall ensure all projects funded through the Public Beach and Coastal Waterfront Access Program are operated and maintained for access purposes.

History Note: Authority G.S. 113A-124; 113A-134.3; Eff. January 1, 1998; Amended Eff. February 1, 2009; August 1, 2007; Readopted Eff. September 1, 2021.

15A NCAC 07M .0307 ELIGIBILITY, SELECTION CRITERIA AND MATCHING REQUIREMENTS

(a) Any local government in the 20-county coastal region having ocean beaches or estuarine or public trust waters within its jurisdiction may apply for access funds for the development of beach or coastal waterfront access facilities with associated improvements. Boat ramps, or canoe/kayak launch areas may also be developed provided that the access facilities incorporate pedestrian access to coastal waters.

(b) Eligible projects include:

- (1) Land acquisition, including acquisition of unbuildable lots as described in G.S. 113A-134.3(a);
- (2) Local access sites;
- (3) Neighborhood access sites or improvements;
- (4) Regional access sites or improvements;
- (5) Multi-regional access sites or improvements;
- (6) Urban waterfront development access projects;
- (7) Reconstruction or relocation of existing, damaged facilities;
- (8) Reconstruction or replacement of facilities; and
- (9) Offsite parking areas servicing access sites within the local government's jurisdiction.

(c) The following criteria shall be used to select projects that may receive financial assistance:

- (1) The applicant demonstrates a need for the project due to a high demand for public access and limited availability within the local government jurisdiction.
- (2) The project is identified in the local land use plan or local access plan;
- (3) The applicant has not received previous assistance from the Public Beach and Coastal Waterfront Access Program grant program or the applicant has received assistance and

demonstrated its ability to complete previous projects with funds from the grant program;

- (4) The applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Paragraphs (d) and (e) of this Rule;
- (5) The project proposal includes multiple funding sources; and
- (6) The project location includes donated land with physical limitations, or it has been deemed unbuildable as described in G.S. 113A-134.3(a).

(d) The North Carolina Department of Commerce's Tier designations, as outlined by G.S. 143B-437.08 shall be used to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities, which shall have a contribution of at least 10 percent. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.

(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities, which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.

(f) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other State programs.

(g) Multi-phase projects shall be considered on their own merits within the pool of applications being reviewed in any year.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. February 1, 2009; September 1, 2007; August 1, 2000;
Readopted Eff. September 1, 2021.*

15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE

Prior to submitting its final application for a public access grant in accordance with 15A NCAC 07M .0306(f) from the Division of Coastal Management, the local government shall hold a public meeting or hearing to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Readopted Eff. September 1, 2021.*

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 03D .0102 FORMS AND PUBLICATIONS

*History Note: Authority G.S. 20-1;
Eff. July 1, 1978;
Amended Eff. January 1, 1994; February 1, 1982; April 11, 1980;
Repealed Eff. September 1, 2021.*

19A NCAC 03D .0221 CONDITIONS FOR ISSUING TEMPORARY MARKERS BY A DEALER

(a) A dealer shall meet the following conditions before issuing a temporary marker:

- (1) The dealer has passed ownership to the purchaser by:
 - (A) either assigning the title or Manufacturer's Certificate of Origin, or pursuant to G.S. 20-52.1 if the title of Manufacturer's Certificate of Origin is unavailable; and
 - (B) delivering the vehicle to the buyer.
- (2) Dealer has met all application and fee requirements pursuant to G.S. 20-79.1.
- (3) Dealer has proof of liability insurance pursuant to G.S. 279.21.
- (4) Exception. Subparagraph (a)(2) of this Rule shall not apply when the dealer is selling the vehicle to an out-of-state purchaser and the vehicle is to be removed from the State of North Carolina to the purchaser's place of residency prior to the expiration of the 30-day temporary registration marker. Proof of insurance Form FS-1 shall be completed and kept by the dealer as part of his or her records. For purposes of the Rules of this Section, Form FS-1 is provided by insurance companies in the State and requires the following:
 - (A) vehicle year, make and identification number;
 - (B) insurance company name and company code;
 - (C) insurance policy number;
 - (D) registered owner's name and effective date of insurance;
 - (E) owner's driver license number and date of birth;
 - (F) owner's address;
 - (G) preparation date and authorized signature of insurance company representative.

(b) Procedure for issuance of 30-day temporary markers:

- (1) All 30-day temporary markers shall be issued in numerical order, beginning with the lowest number of the set or sets.
- (2) The vehicle identification number, the make, the issuance date, and the expiration date shall be entered on the face of the temporary marker.

- (3) A receipt, which corresponds in number with the 30-day temporary marker, shall be issued by the dealer to the buyer.
- (4) The receipt shall be completed in duplicate and shall be legible.
- (5) The white copy of the receipt, with the 30-day marker, shall be delivered to the purchaser. The pink copy shall be retained by the issuing dealer for one year.
- (6) Pursuant to G.S. 20-52, all documents necessary to title and register the vehicle shall be presented to a license plate agency or mailed to the North Carolina Division of Motor Vehicles within four working days from date of issuance. When the purchaser is a nonresident, a 30-day temporary marker may be issued to the nonresident for the sole purpose of removing the vehicle to his or her place of residency provided the customer has in effect liability insurance with a company licensed in North Carolina. The dealer is neither required to obtain from such nonresident a written application for North Carolina registration nor to collect the North Carolina registration fees. However, Form FS-1 shall be completed and kept by the dealer as part of his or her records. If a plate is to be transferred, a 30-day temporary marker shall not be issued. All information shall be recorded on the report sheet in the back of receipt book.
- (7) All 30-day temporary markers and receipts that are voided shall be marked void and recorded on the report sheet. The white copy of the receipt and the 30-day temporary marker shall be mailed to the North Carolina Division of Motor Vehicles License and Theft Bureau together with the report sheets. Receipts and 30-day temporary markers that do not match shall be returned to the Division after recording on report sheet. The receipt shall not be altered.
- (8) Only one 30-day temporary marker shall be issued per vehicle per sale unless requirements in G.S. 20-79.1(h) are met.
- (9) Upon issuance of all receipts in each receipt book, the report sheet shall be completed in duplicate and the original mailed to the Division.

History Note: Authority G.S. 20-39; 20-52.1; 20-279.21; Eff. June 1, 1988;
Amended Eff. January 1, 1994; October 1, 1991; October 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2018;
Amended Eff. September 1, 2021.

19A NCAC 03D .0223 DEALER PLATES

(a) The Application for Dealer Plates Form VS-405 for dealer plates shall be signed by the owner, partner, or officer of the corporation.

(b) Form VS-405 shall include:

- (1) license number and expiration date;
- (2) number of dealer plates noted on VS-419 (if applicable) for renewal;
- (3) additional or new dealer plates requested including the type of plate for independent dealer, franchise dealer, motorcycle plate, exempt trailer, manufacturer plate or motorcycle manufacturer and quantity needed;
- (4) number of dealer transporter plates noted on VS-419 for renewal;
- (5) additional or new dealer transporter plates requested;
- (6) total number of dealer transporter plates;
- (7) number of loaner dealer plates noted on VS-419 for renewal;
- (8) additional or new loaner dealer plates requested;
- (9) quantity of loaner plates;
- (10) late fee as set forth in G.S. 20-88.03 per plate within one month of expiration; and
- (11) total of all requested.

(c) Any dealer seeking to replace lost or stolen dealer plates shall complete and submit Form VS-405 with the fee required by G.S. 20-87(7) to the Division of Motor Vehicles. The dealer shall be reported to the local law enforcement agency and the Division of Motor Vehicles.

History Note: Authority G.S. 20-39; 20-79(a); 20-87(7); 20-88.03;

Eff. June 1, 1988;

Amended Eff. January 1, 1994; October 1, 1991;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0224 ILLEGAL USE OF DEALER PLATES

(a) A dealer shall only use dealer plates in accordance with the requirements of G.S. 20-79(d).

(b) Parts trucks used in delivering parts to other sales outlets may use dealer plates only if the sale of parts is incident to the dealer business.

(c) No person, other than those set forth in G.S. 20-79(d)(5)a. through f. shall operate a dealership vehicle unless they are in possession of a 96-hour permit. The said permit shall include license plate number, permittee's name, address, driver's license number, date and hour of issue and shall be signed by a dealer or sales manager and a person receiving the vehicle. A duplicate copy of the permit shall be retained by the dealer. The permit is void if erasures are made. For purposes of this Rule, "immediate family" as used in G.S. 20-79(d)(5)f. shall include a parent; spouse; sibling; child by blood, adoption, or marriage; grandparent, or grandchild.

(d) A wrecker shall not use dealer plates for wrecker service or on wreckers that move vehicles on a rotation basis at the request of state or local law enforcement authorities. A wrecker may use

a dealer plate on wreckers that tow vehicles for the dealer's customers only.

(e) The civil penalty imposed upon a dealer pursuant to G.S. 20-79(e)(2) is due in full upon assessment by the Division. The license of a dealer who willfully and intentionally fails to pay the civil penalty within 30 days after notice of the assessment is delivered to the dealer or an employee of the dealer shall be suspended by the Division until the penalty is paid in full.

History Note: Authority G.S. 20-39; 20-79; 20-302; 20-294(2);

Eff. June 1, 1988;

Amended Eff. December 1, 1993; October 1, 1991; October 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2018;

Amended Eff. September 1, 2021.

19A NCAC 03D .0225 VEHICLES OFFERED FOR SALE OWNED BY DEALERSHIP

(a) No vehicle shall be sold or offered for sale or trade by any motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler until it has in its possession a certificate of title or manufacturers certificate of origin or the same is available prior to conclusion of the sale or trade to complete transfer of ownership to the consumer-purchaser.

(b) This Rule does not apply when a manufacturer's certificate of origin or title are unavailable at the time of sale or trade and the dealer acts in accordance with G.S. 20-52.1(d), 20-72(b), or 20-72.1, whichever is applicable.

History Note: Authority G.S. 20-39; 20-79;

Eff. June 1, 1988;

Amended Eff. October 1, 1991;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0226 VEHICLES OFFERED FOR SALE ON CONSIGNMENT

(a) Any dealer offering a vehicle for sale that is on consignment from a manufacturer, distributor, factory branch, distributor branch, wholesaler, or individual shall have in his possession a consignment contract for each vehicle, executed by both parties.

(b) The consignment contract shall consist of the following:

- (1) the effective dates of the contract;
- (2) the first, middle and last name, address, and the telephone number, if available, of the owner;
- (3) the description of the vehicle on consignment, including the make, model, body style, year, and vehicle identification number;
- (4) the listing charges;
- (5) the percentage of commission or the amount of the commission the dealer is to get if the vehicle is sold; and
- (6) the right of the dealer to receive the agreed upon commission, if the vehicle is sold after the termination of the agreement and as a result of the dealer's effort, which shall not exceed 30 days.

(c) Any dealer offering a vehicle for sale on consignment shall tell the prospective customer that the vehicle is on consignment unless the dealer is going to take ownership of the vehicle by completing a re-assignment on the title documents. Any dealer selling a vehicle on consignment from a wholesaler shall take ownership of that vehicle prior to its retail sale.

(d) Dealer plates shall not be used to demonstrate a vehicle on consignment. However, the consignor's (owner's) plate may be used so long as the vehicle registration is active and liability insurance is in effect.

(e) In addition to a consignment contract, the dealer shall keep on file an equipment listing of the vehicle, consisting of, but not limited to, the following:

- (1) owners name and address; and
- (2) a description of the vehicle which shall include the year, make, model, body style, color, odometer reading, additional equipment, and the disclosure of known defects.

(f) The ownership documents of any vehicle on consignment shall be made available by the dealer to any North Carolina Division of Motor Vehicles employee on request.

(g) The owner shall execute the ownership documents and deliver them to the purchaser at the time the vehicle is delivered.

History Note: Authority G.S. 20-79(d); 20-302;

Eff. June 1, 1988;

Amended Eff. January 1, 1994; October 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2018;

Amended Eff. September 1, 2021.

19A NCAC 03D .0227 VEHICLES OFFERED FOR SALE ON A FLOOR PLAN LIEN

(a) A "floor plan "lien" is a revolving line of credit in which a superior financial interest in a vehicle is held by a party other than the dealer.

(b) A dealer offering a vehicle subject to a floor plan lien for sale shall at the time of sale, satisfy the floor plan lien and obtain the title from the floor plan lienholder, execute the title documents, and deliver them to the purchaser or the lienholder as required by G.S. 20-52.1, 20-72, 20-72.1 and 20-75 at the time the vehicle is delivered.

(c) Manufacturers Certificate of Origin may be retained by the floor plan lienholder so long as the Manufacturers Certificate of Origin is located within the boundaries of North Carolina; provided the dealer has in possession, available for inspection, an invoice from the manufacturer or distributor and a Floor Plan Lien Disclosure Statement completed, dated, and signed by both parties. The Floor Plan Lien Disclosure Statement (LT-411) includes the following:

- (1) name of lien holder;
- (2) vehicle make, model, and style;
- (3) vehicle identification number;
- (4) address of lien holder;
- (5) name of dealership;
- (6) signature of lien holder and dealer; and
- (7) date of agreement.

(d) Mobile and manufactured home dealers shall be exempt from the requirement that the Manufacturer's Certificate of Origin be

located within the boundaries of North Carolina. All other provisions of this Rule shall apply to mobile and manufactured home dealers.

History Note: Authority G.S. 20-39; 20-52.1; 20-72; 20-72.1; 20-75;

Eff. June 1, 1988;

Amended Eff. June 1, 1995; January 1, 1994; October 1, 1991;

Readopted Eff. September 1, 2021.

**19A NCAC 03D .0229 CORP. SURETY BONDS:
MOBILE MANUFACTURED HOME DEALERS**

A person, business or entity who is engaged in the business of selling mobile or manufactured home, as defined in G.S. 143-143.9, and who also sells motor vehicles in connection to this business, shall either:

- (1) furnish to the Division a corporate surety bond, cash bond, or fixed equivalent thereof pursuant to G.S. 20-288(e); or
- (2) furnish to the Division a copy of the bond that the dealer has furnished to the North Carolina Manufactured Housing Board, pursuant to G.S. 143-143.12.

History Note: Authority G.S. 20-288(e); 20-302;

Eff. June 1, 1988;

Amended Eff. January 1, 1994;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0402 UNCLAIMED MOTOR VEHICLE

(a) To report an unclaimed vehicle pursuant to G.S. 20-77(d), a business operator or landowner shall submit a Report of Unclaimed Motor Vehicle Form to the License and Theft Bureau.

(b) Report of Unclaimed Motor Vehicle Forms are available at <https://www.ncdot.gov/dmv/programs/fraud-theft/Pages/forms.aspx> and <https://connect.ncdot.gov/business/DMV/Pages/default.aspx>.

(c) A Report of Unclaimed Motor Vehicle Form shall contain the following information:

- (1) name, address, and phone number of business operator or landowner;
- (2) make, body style, and year of vehicle;
- (3) state, number, and year of the plate on the vehicle;
- (4) date vehicle was left;
- (5) vehicle identification number;
- (6) approximate value of the vehicle;
- (7) location of where the vehicle is being stored;
- (8) reason for vehicle being left;
- (9) condition of vehicle; and
- (10) person or firm who authorized the tow of the vehicle.

History Note: Authority G.S. 20-2; 20-39; 20-77(d);

Eff. July 1, 1978;

Amended Eff. October 1, 1991; February 1, 1982;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0403 SALE OF VEHICLE TO SATISFY GARAGE STORAGE OR MECHANIC LIEN

If a vehicle remains unclaimed following the submission of an Unclaimed Vehicle report as set forth in Rule .0402 of this Section and the expiration of time set forth in G.S. 44A-4(a), a person wishing to sell the unclaimed vehicle to satisfy a lien under Article 1 of Chapter 44A of the North Carolina General Statutes, he or she shall notify the License and Theft Bureau by completing a Notice of Intent to Sell a Vehicle to Satisfy Storage and/or the Mechanic's Lien Form LT-262. The form can be found at www.ncdot.gov/dmv and shall contain the following:

- (1) vehicle make, year, body style, license plate number, serial or VIN number, and year the vehicle was last registered;
- (2) location where the vehicle is stored;
- (3) description of the lien as provided by G.S. 44A-2;
- (4) date of storage;
- (5) name and address of person authorizing repairs, services, towing and storage;
- (6) name, address and signature of lienor; and
- (7) payment of the fee set forth in G.S. 44A-4(b)(1).

History Note: Authority G.S. 20-2; 20-39; 20-77(d); 20-114(c); 44A-2; 44A-4;

Eff. July 1, 1978;

Amended Eff. October 1, 1991; February 1, 1982;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0404 SALE OF MOTOR VEHICLE UNDER JUDICIAL PROCEEDINGS

History Note: Authority G.S. 20-2; 20-39; 20-114(c);

Eff. July 1, 1978;

Amended Eff. October 1, 1991; February 1, 1982;

Repealed Eff. September 1, 2021.

19A NCAC 03D .0405 SALE OF ABANDONED VEHICLE

A city, county, or law enforcement agency selling an abandoned vehicle as a result of a city or county ordinance on file with the License and Theft Bureau shall give notice to the Bureau at <https://connect.ncdot.gov/business/DMV/Pages/Report-Unclaimed-Motor-Vehicles.aspx>.

History Note: Authority G.S. 20-2; 20-39; 20-77; 160A-303;

Eff. July 1, 1978;

Amended Eff. October 1, 1991; February 1, 1982; April 11, 1980;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0517 DEFINITIONS

For purposes of this Section and Article 3A of Chapter 20 of the North Carolina General Statutes, these words and phrases shall have the following meanings, except in those instances where the context indicates a different meaning:

- (1) Abbreviations used in these Rules shall have the following meanings:
 - (a) CO - Carbon monoxide;

- (b) GVWR - Gross Vehicle Weight Rating;
- (c) HC-Hydrocarbons;
- (d) PSI - Pounds Per Square Inch;
- (e) NOx - Nitrogen Oxides; and
- (f) PPM - Parts Per Million.
- (2) Ambient Light: That portion of the atmosphere surrounding human, animal, and plant life.
- (3) Base: The place where a vehicle is dispatched from, garaged, serviced, maintained, operated, or otherwise controlled. If any vehicle is located in or operated from a county participating in the safety emission program for a period of 30 days, said vehicle shall be considered based within that county.
- (4) Certified Inspection Mechanic: A person who has completed the courses required by G.S. 20-183.4(c) and 20-183.4A, passed a written examination approved by the License and Theft Bureau, and been issued a safety inspection mechanic license or a safety and emission inspection mechanic license by the Bureau.
- (5) Crankcase Emissions: Air pollutants emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.
- (6) Current Year Model: The production period of new motor vehicles as designated by the manufacturer in the calendar year in which the period ends. If the manufacturer does not designate a production period, the model year shall mean the 12-month period beginning January of the year in which production began.
- (7) Diagnostic Equipment: Tools or machines used to diagnose engine performance.
- (8) Emission: The act of a motor vehicle emitting into the atmosphere any air pollutants including carbon monoxide, hydrocarbons, or nitrogen oxides.
- (9) Emissions Analyzer: An approved device used to evaluate the vehicle emission control system to ensure operation in accordance with the manufacturer's specifications that electronically records and transmits safety and emissions inspection data to the State. An approved device is considered a device that meets the certification requirements as defined by the Department of Environmental Quality Specifications for the North Carolina Analyzer found at <https://deq.nc.gov/about/divisions/air-quality/motor-vehicles-air-quality/inspection-maintenance-program/analyzer-vendor-information>.
- (10) Established Place of Business for Safety and Emissions Inspection: A permanent structure operated by a licensee that meets the requirements set forth in G.S. 120-183.4 to test and inspect motor vehicles and the offices of a licensed safety inspection or emissions inspection station that provides a locked place for maintaining records. The business shall be open during its business hours to conduct safety inspections and emissions tests and make available to License and Theft Bureau staff all records and required equipment for examination and testing.
- (11) Exhaust Emissions: Air pollutants emitted into the atmosphere from any opening downstream from the exhaust parts of a motor vehicle engine.
- (12) Heavy Duty Motor Vehicle: A motor vehicle which is designed primarily for:
 - (a) the transportation of property and which is rated at more than 8,500 GVWR;
 - (b) the transportation of persons and which has a capacity of more than 12 persons;
 - (c) use as a recreational motor vehicle which is rated at more than 8,500 GVWR; or
 - (d) use as an off-road utility vehicle.
- (13) Inspection: The safety inspection or emissions inspection of motor vehicles required by G.S. 20, Article 3A, Part 1 and Part 2.
- (14) Inspection Laws: G.S. 20, Article 3A, Part 1 and Part 2 and rules adopted by the Commissioner of Motor Vehicles.
- (15) Inspection/Maintenance (I/M): A strategy to reduce emissions from in-use motor vehicles by identifying vehicles that need emission related maintenance and requiring that such maintenance be performed.
- (16) Inspection Period: The period of time a motor vehicle is required to be inspected. To be a current inspection, a motor vehicle may be inspected up to ninety days prior to the last day of the month in which the registration on the vehicle expires pursuant to G.S. 20-183.4C. Motor vehicles not previously registered in this State shall be exempt for a period of 12 months.
- (17) License: In accordance with G.S. 20-183.4 and 20-183.4A, the license issued by the Commissioner of Motor Vehicles which is required for a person to operate a safety inspection or emission inspection station.
- (18) Light Duty Motor Vehicle: A motor vehicle which is designed primarily for:
 - (a) transportation of property and which is rated at or less than 8,500 GVWR by the manufacturer; or
 - (b) use in the transportation of persons and which has a capacity of 12 persons or fewer.
- (19) Light Transmittance Measuring Device or Light Meter, Unit, or Device: A photometer capable of measuring the net transmittance of a

- window or windshield for light at 560 nm with a variance of no more than 20 nm.
- (20) **Motorcycle:** A motor vehicle as defined under G.S. 20-4.01(22).
- (21) **Multipiece Photometer:** A photometer in which the light source and light detector are mechanically separate units that can be positioned on opposite sides of a fixed window or windshield.
- (22) **Net Transmittance:** The luminous transmittance over the 560 nm with a variance of 20 nm wavelength range, including the effects of Fresnel (surface) reflections.
- (23) **Recreational Motor Vehicle:** As set forth in G.S. 20-4.01(32b), A vehicle which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use.
- (24) **Revocation:** In accordance with G.S. 20-183.7A, the termination of a license issued by the License and Theft Bureau to a safety inspection and emission inspection station.
- (25) **Inspection Analyzer:** A device used to evaluate, electronically record and transmit inspection data to the State. An approved device is considered a device that meets the certification requirements as defined by the License and Theft Bureau or the Department of Environmental Quality Specifications for the North Carolina Analyzer System. Certification requirements can be found on the Department of Environmental Quality's website at <https://deq.nc.gov/about/divisions/air-quality/motor-vehicles-air-quality/inspection-maintenance-program/analyzer-vendor-information>.
- (26) **Section:** The License and Theft Bureau of the Division of Motor Vehicles.
- (27) **Self-Inspector:** A person, firm or corporation licensed by the License and Theft Bureau for the purpose of inspecting only those vehicles owned or operated by such person, firm, or corporation.
- (28) **Station:** A place of business licensed by the Commissioner of Motor Vehicles to conduct inspections of motor vehicles as required by the inspection laws.
- (29) **Suspension of Safety/Emission License:** In accordance with G.S. 20-183.7A and Rule .0522 of this Section, the temporary withdrawal of a license issued by the Division of Motor Vehicles to a safety inspection and emission inspection station for a definite period of time.
- (30) **Tampering:** Rendering inoperative, or the intentional maladjustment of any device installed on a motor vehicle designed or intended to control the amount of emissions from a vehicle.

- (31) **Waiver:** A document issued by the Commissioner of Motor Vehicles or his designated agent exempting a particular motor vehicle from the requirements of the emission inspection.

History Note: Authority G.S. 20-2; 20-4.01(32b); 20-39; 20-183.2; 20-183.4; 20-183.4A; 20-183.5; 20-183.5A; 20-183.7A; 20-183.8A;

Temporary Adoption Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. October 1, 1994;

Amended Eff. July 1, 2010; February 1, 1996;

Readopted Eff. September 1, 2021.

19A NCAC 03D .0518 LICENSING OF SAFETY OR EMISSIONS INSPECTION STATIONS

(a) An application for licensing as a Safety Equipment or Safety Equipment Emissions Inspection Station shall be made on forms furnished by the Division of Motor Vehicles and filed with the License and Theft available at <https://connect.ncdot.gov/business/DMV/Pages/Inspection-Stations.aspx>. Form LT-300 requires the following:

- (1) inspection station name, address, county, and telephone number;
- (2) type of license required including public or self-inspection station and the number of vehicles operated by the business;
- (3) type of station;
- (4) type of business;
- (5) if individually owned business or partnership, applicants shall list name and residence address of owner or partners;
- (6) name of owner, corporation or partner;
- (7) owner, corporation or partner driver license number and address;
- (8) listing of certifiable or certified technicians with a valid driver license applying;
- (9) notification if any member of the partnership or officer of the corporation has ever had a license under this law refused, suspended, or revoked;
- (10) notification if any member of the partnership or officer of the corporation has ever been licensed as an inspection station;
- (11) signature of applicant;
- (12) designate an individual who is responsible for the day-to-day operation of the station; and
- (13) acknowledgement and signature of notary public.

(b) An applicant for licensing for a Safety Equipment or Safety Equipment Emissions Inspection Station shall have:

- (1) an area used primarily for repair of motor vehicles;
- (2) a minimum of 45 lineal feet of level floor surface at least 10 feet wide when using a light chart for testing lights, or a minimum of 25 lineal feet of level floor surface a minimum of

- (3) 10 feet wide when using a light testing machine. An inspection station shall not have dirt floors; an area enclosed to permit an inspection at all times regardless of weather conditions. Trailers may be inspected outside of the enclosed area as long as attached to the prime mover;
- (4) if a light chart is used to check lights, there shall be parallel lines at least three feet long painted on the floor surface 25 feet from the chart; and
- (5) licensed inspection stations are not required to conduct inspections on equipment as required in Rule .0519 of this Section.

(c) An applicant for licensing for a Safety Equipment Inspection Station inspecting only motorcycles shall have:

- (1) an area used primarily for repair of motorcycles;
- (2) an area enclosed to permit an inspection at all times regardless of weather conditions. An inspection station shall not have dirt floors; and
- (3) if a light chart is used to check lights, there shall be parallel lines at least 3 feet long painted on the floor surface 25 feet from the chart.

History Note: Authority G.S. 20-2; 20-39; 20-183.4; 20-183.4A;
Eff. October 1, 1994;
Amended Eff. July 1, 2010;
Readopted Eff. September 1, 2021.

19A NCAC 03D .0519 STATIONS

- (a) Licensed safety inspection and emissions inspection stations shall keep the area where vehicles are inspected and the area where inspection records are kept, as required by G.S. 20-183.6A(b), free of spills, debris, materials that may present a hazard to the inspector mechanic or the vehicle, obstructions that inhibit inspection of vehicles, or present safety concerns for inspectors of the License and Theft Bureau. All vehicles shall remain in the inspection area during the entire inspection.
- (b) Stations with only a 25-foot lineal inspection lane shall not inspect trucks or other vehicles exceeding that length.
- (c) Stations with mechanical aimers shall not inspect vehicles with headlamps that were not manufactured to be aimed with this device. These headlamps shall be aimed with photoelectric eyes, wall charts, computerized headlight test equipment, or on-board headlight aiming devices.
- (d) Stations not equipped with an emission analyzer shall not inspect 1996 or newer gasoline powered motor vehicles registered or based in counties designated as non-attainment for air quality standards by either the North Carolina Department of Environmental Quality or U.S. Environmental Protection Agency. Stations may perform the safety equipment inspections on vehicles 1995 model year or older, diesel powered vehicles, motorcycles, trailers, and vehicles not previously titled.
- (e) Each station shall have equipment and tools for carrying out inspections, which include the following:

- (1) one jack or lift with minimum capacity of two tons;
- (2) one headlight tester, wall chart, or aiming kit adapters to fit all headlights;

- (3) one workbench;
- (4) one creeper;
- (5) one tire tread depth gauge calibrated in 32nds of an inch;
- (6) Emission Control System Application Manual in written or electronic format;
- (7) one Department of Environmental Quality Emission Analyzer, with approved Division of Motor Vehicles software or an electronic device with the ability to connect to the Internet and access the web-based inspection system; and
- (8) one active telephone line with jack or Internet access for Web Based stations.

(f) Each station inspecting only motorcycles shall have equipment and tools for carrying out inspections, which include the following:

- (1) one motorcycle jack or lift;
- (2) one headlight tester or aiming kit adapters to fit all headlights;
- (3) one workbench;
- (4) one tire tread depth gauge (calibrated in 32nds of an inch);
- (5) one Safety Inspection Analyzer with approved software by the North Carolina Department of Environmental Quality at <https://deq.nc.gov/about/divisions/air-quality/motor-vehicles-air-quality/inspection-maintenance-program/station-owner-inspector-information/software-versions>.
- (6) an active telephone line with jack or Internet access for Web Based stations.

History Note: Authority G.S. 20-2; 20-39; 20-183.4; 20-183.4A;
Eff. October 1, 1994;
Amended Eff. July 1, 2010;
Readopted Eff. September 1, 2021.

19A NCAC 03D .0520 MECHANIC REQUIREMENTS

(a) An applicant for an inspection mechanic license and the owner of the inspection station shall sign their names on Action Form for Inspector/Mechanical Certification (LT-310) demonstrating they meet the requirements as set out in G.S. 20-183.4(c) and 20-183.4A(c). Form LT-310 requires the following:

- (1) action requested to indicate new or renewal, adding an employer name, or changing an employer name;
- (2) mechanic's name, driver license number, home phone number, and address;
- (3) mechanic's race, sex, and date of birth;
- (4) mechanic's signature; and
- (5) employer information including station number, telephone number, county, name of station, address, and signature of owner partner or officer.

(b) Upon request by a law enforcement officer of the License and Theft Bureau, a licensed inspection mechanic shall demonstrate his or her knowledge, skills and abilities of the equipment used to

perform an inspection, vehicle components, procedures, statutes and rules, pertaining to a safety and emissions inspection.

History Note: Authority G.S. 20-2; 20-39; 20-183.4; 20-183.4A(c); 20-183.6A; Eff. October 1, 1994; Readopted Eff. September 1, 2021.

19A NCAC 03D .0521 LICENSING REQUIREMENTS

(a) In order to be licensed as a North Carolina Safety Inspection Mechanic, an applicant shall meet the requirements set forth in G.S. 20-183.4(c). For purposes of G.S. 20-183.4(c)(1), the applicant shall complete the following:

- (1) attend and pass an eight-hour Safety Inspection Course offered by a North Carolina Community College; and
- (2) pass a written examination with a score of no less than 80 percent correct answers. No oral exams shall be allowed.

(b) An application for a safety inspection station or safety inspection mechanic license shall be approved or disapproved in accordance with G.S. 20-183.4, 20-183.4A, and 93-B-8.1. Each applicant approved shall be notified and furnished with the appropriate station license or inspection mechanic license. Inspection station licenses shall be valid only for the place of business set forth in the application.

(c) Each inspection station shall notify the License and Theft Bureau of the name and inspection license number of each inspection mechanic the station employs prior to allowing the inspection mechanic to perform any inspections at that station.

(d) The notice shall be on a form as outlined in Rule .0520 of this Section, supplied by the License and Theft Bureau, and shall be signed by the station owner and the inspection mechanic. If any licensed inspection mechanic leaves the employment of a safety equipment station, the inspection station shall notify the local License and Theft Bureau inspector within three days after the inspection mechanic's employment is terminated. An inspection mechanic license shall be valid only for the person in whose name it is issued.

(e) Pursuant to G.S. 143-215.107A, no Safety Inspection Station shall inspect any gasoline powered vehicle, excluding the three most recent model years with less than 70,000 miles, if the vehicle is registered or based in a county participating in the emission inspection program unless the station has an exhaust emission analyzer to conduct emissions inspections. Owners of vehicles registered in a county participating in the emission program but is based and operated outside the county may submit a request to the License and Theft Bureau for an exemption from the emission inspection. The request for an exemption shall contain confirmation that the vehicle for which the exemption is requested is registered in an emission inspection county, but is based and operated outside of the county in which it is registered. The License and Theft Bureau shall approve and issue a written exemption for the vehicle upon receipt of supporting documentation by the vehicle owner that shows the vehicle is based outside the registered county. A new exemption shall be requested and approved in accordance with this Rule for each inspection period. Safety Inspections stations may conduct the safety equipment inspection in lieu of a safety and emission

inspection. Vehicles exempted from emission inspection because they are based outside of the county participating in the emission program shall have a copy of the approved exemption form in the vehicle at all times.

History Note: Authority G.S. 20-2; 20-39; 20-183.4; 20-183.4A; 93-B-8.1; Eff. October 1, 1994; Readopted Eff. September 1, 2021.

19A NCAC 03D .0522 DENIAL, SUSPENSION OR REVOCATION OF LICENSES

(a) Denial of License: The Commissioner of Motor Vehicles shall deny the application of any applicant for a Safety Equipment or Safety Equipment Emissions Inspection Station License who fails to meet the qualifications set out in G.S. 20, Article 3A, Part 2 or the rules in this Section. Applicants denied licensing shall be notified. An applicant who submits fraudulent or fictitious information with the application shall be denied a license. Persons who are denied a license shall be allowed a hearing in accordance with G.S. 20-183.8G. For applications denied pursuant to G.S. 93B-8.1, technicians and stations who have been denied a license shall not re-apply for 12 calendar months from last denial.

(b) Suspension or Revocation of License:

- (1) The license of any inspection station shall be subject to suspension or revocation when it or any of its personnel conducting inspections violates the rules in this Section or G.S. 20, Article 3A, Part 2. Any person, firm, or corporation whose license is suspended or revoked shall not inspect vehicles while its license is suspended or revoked. Every licensee whose license is suspended or revoked or who is assessed a civil penalty pursuant to G.S. 20-183.7A and G.S. 20-183.8B or who receives a warning letter from the License and Theft Bureau shall be allowed a hearing in accordance with G.S. 20-183.8G.
- (2) Prior to the reinstatement of a license of any Safety Equipment or Safety Equipment Emissions Inspection Station License, which has, by order of the Commissioner of Motor Vehicles, been revoked or suspended, the applicant shall demonstrate to the Commissioner or License and Theft Bureau staff that its employees have knowledge of the safety equipment or safety equipment emission inspection procedures and requirements described in the Rules in this Section and that the location is mechanically equipped to carry out inspections.
- (3) Prior to the reinstatement of a Safety and Emission Inspection Mechanic License, he or she shall meet the requirements set forth in G.S. 20-183.7A(e) and G.S. 20-183.8B(e). Proof of course attendance and passing a written test as set forth in Rule .0521 of this Section shall be presented to License and Theft Bureau staff.

- (4) Motor vehicle owners assessed civil penalties or fines shall be allowed a hearing in accordance with G.S. 20-183.8G. Motor vehicle owners requesting a hearing shall mail a written hearing request to the Commissioner of Motor Vehicles, 3101 Mail Service Center, Raleigh, NC 27699-3101.

History Note: Authority G.S. 20-2; 20-39; 20-183.7A(e); 20-183.8B(e); 20-183.8D; 20-183.8G; 93B-8.1;
Eff. October 1, 1994;
Amended Eff. November 1, 2016;
Readopted Eff. September 1, 2021.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14A .0104 ADDRESS

The address for the board is 121 Edinburgh South Drive, Suite 209, Cary, North Carolina 27511.

History Note: Authority G.S. 88-23;
Eff. February 1, 1976;
Amended Eff. January 1, 2015; August 1, 1998; December 6, 1991; January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. September 1, 2021.

21 NCAC 14A .0404 FEES

- (a) Fees and civil penalties paid by personal checks that are returned for any reason shall be treated in the same manner as though no fee had been tendered and the bank's returned check fee, not to exceed thirty-five dollars (\$35.00), shall be assessed to the account holder. All subsequent payments must be submitted via credit card, money order, or certified check.
- (b) All moneys tendered in payment of fees shall be in the exact amount required for said fees. No part of a fee submitted to the Board per G.S. 88B-20 shall be refundable.
- (c) Licenses, certifications, duplicates, inactivations, or reactivations shall not be processed until all fees and assessed civil penalties are paid in full.

History Note: Authority G.S. 25-3-506; 88B-2; 88B-4;
Eff. September 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. September 1, 2021.

21 NCAC 14H .0403 DISINFECTION PROCEDURES

- (a) Disinfectant, as applicable in this Subchapter, is defined as a disinfectant that is EPA registered as effective against:
- (1) bacteria including *Staphylococcus aureus*, MRSA and *Pseudomonas aeruginosa*;
 - (2) viruses including HIV, Hepatitis B and C;

- (3) fungi including *Trichophyton mentagrophytes*; and
 - (4) human coronavirus.
- (b) Disinfectants that meet the requirements of Subparagraph (a)(1), (2), and (3) of this Rule may be used if they are listed on EPA list N as effective against pathogen SARS-CoV-2.
- (c) Infection Control rules that apply to towels and cloths are as follows:

- (1) clean protective capes, drapes, linens, and towels shall be used for each patron;
 - (2) after a protective cape has been in contact with a patron's neck it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer. Capes that cannot be laundered and dried in a heater dryer may be disinfected in accordance with the manufacturer directions; and
 - (3) after a drape, linen, or towel has been in contact with a patron's skin it shall be placed in a clean, covered container until laundered with soap and hot water and dried in a heated dryer. A covered container may have an opening so soiled items may be dropped into the container.
- (d) Any paper or nonwoven protective drape or covering shall be discarded after one use.
- (e) There shall be a supply of clean protective drapes, linens and towels at all times. Wet towels used in services must be prepared fresh each day. Unused, prepared wet towels must be laundered daily.
- (f) Clean drapes, capes, linens, towels and all other supplies shall be stored in a clean area.
- (g) Bathroom facilities must be kept clean.
- (h) All implements shall be cleaned and disinfected after each use in the following manner:
- (1) They shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.
 - (2) They shall be disinfected with either:
 - (A) disinfectant that is mixed and used according to the manufacturer's directions. They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or
 - (B) by UV-C, ultraviolet germicidal irradiation used in accordance with the manufacturer's directions.
 - (3) If the implement is shears, a razor, not immersible, or is not disinfected by UV-C irradiation, it shall be cleaned by wiping it with a clean cloth moistened or sprayed with a disinfectant used in accordance with the manufacturer's directions.
- (i) All disinfected non-electrical implements shall be stored in a clean, closed cabinet or clean, closed container.
- (j) All disinfected electrical implements shall be stored in a clean area separate from other clean implements.

- (k) Disposable and porous implements and supplies must be discarded after use or upon completion of the service.
- (l) Product that comes into contact with the patron must be discarded upon completion of the service.
- (m) Containers with open faces may be covered or closed with plastic wrapping. Disinfected implements must not be stored with any implement or item that has not been disinfected.
- (n) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.
- (o) All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers, and must conform in all respects to the requirements of the Federal Food, Drug, and Cosmetic Act as set forth in PL 75-717.52 accessible at www.fda.gov. Any product apportioned for use and removed from original containers must be distributed in a sanitary manner that prevents contamination of product or container. Any product dispensed in portions into another container must be dispensed into a clean container and applied to patrons by means of a disinfected or disposable implement or other clean methods. Any product dispensed in portions not dispensed into another container must be used immediately and applied to patrons by means of a disinfected or disposable implement or other clean methods. No product dispensed in portions may be returned to the original container.
- (p) As used in this Rule whirlpool or footspa means any basin using circulating water.
- (q) After use by each patron each whirlpool or footspa must be cleaned and disinfected as follows:
 - (1) all water must be drained and all debris removed from the basin;
 - (2) the basin must be disinfected by filling the basin with water and circulating a surfactant or enzymatic soap with a disinfectant used according to manufacturer's instructions through the unit for 10 minutes;
 - (3) the basin must be drained and rinsed with clean water; and
 - (4) the basin must be wiped dry with a clean towel.
- (r) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:
 - (1) the screen must be removed and all debris trapped behind the screen removed;
 - (2) the screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
 - (3) before replacing the screen it must be totally immersed in disinfectant in accordance to the manufacturer's instructions;
 - (4) the inlet and area behind the screen must be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and
 - (5) the spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.
- (s) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason, and name of the staff member who performed the

cleaning. This record must be made for each whirlpool or footspa and must be kept and made available for at least 90 days upon request by either a patron or inspector.

- (t) The water in a vaporizer machine must be emptied daily and the unit disinfected daily after emptying.
- (u) The area where services are performed that come in contact with the patron's skin including treatment chairs, treatment tables, and beds shall be disinfected between patrons.
- (v) A manufacturers label for all products, cleaners, and disinfectant concentrate must be available at all times. If a concentrate bottle is emptied, it must remain available until a new bottle is available.
- (w) When mixed disinfectant concentrate is placed in a secondary container such as a spray bottle, tub or jar, that container must be labeled to indicate what chemical is in the container. SDS sheets must be available for all disinfectants in use at all times.
- (x) Disinfectants must be stored and disposed of in accordance with all local, State, and federal requirements.
- (y) The cabinet and supplies of a towel warmer machine must be emptied daily and the unit dried daily after emptying.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. September 1, 2021; September 1, 2020; October 1, 2019; March 1, 2018.

21 NCAC 14T .0201 ALL COSMETIC ART SCHOOLS

(a) Cosmetology schools must have the following physical departments:

- (1) Practice Department – a minimum of 200 square feet with a table or tables and or stands to accommodate at least 10 students and have at least 40 inches between each mannequin. Cosmetic art schools must provide an additional 5 square feet in the practice department for each student over the maximum of 10. This area shall have at least one mirror of a minimum of two square feet.
- (2) Clinic Department – the clinic floor for performance of all cosmetic art services. Within the clinic area each school shall have:
 - (A) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
 - (B) 24 inches from the center of the chair forward;
 - (C) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
 - (D) at least 30 inches of space from the back of each styling chair, esthetics table to the wall of the school.
- (3) Dispensary – a room or area to organize and maintain supplies, equipment for disinfection of all implements and a sink with hot and cold running water. All cosmetic art schools must

- have the required equipment to carry out disinfection procedures per 21 NCAC 14H .0403 and .0404;
 - (4) Theory classroom – classroom with a minimum of 300 square feet to accommodate a maximum of 25 students. Cosmetic art schools must provide an additional 8 square feet in the theory classroom for each student over the maximum of 25;
 - (5) Office – administrative office for the secure and locked facilitation of student records and files. This office shall be outfitted with a minimum of one desk and one chair;
 - (6) Reception area – a reception area for clients to wait prior to receiving services;
 - (7) Break room for student use;
 - (8) Restrooms for student and public use;
 - (9) Locker or dressing room – a locker or room for students to secure and lock personal belongings throughout the day; and
 - (10) All stations as defined in Rule .0302 of this Subchapter must be numbered numerically.
- (b) Manicuring, esthetics and natural hair care schools must have the following physical departments:
- (1) Clinic Department – the clinic floor for performance of all cosmetic art services. Within the clinic area each school shall have:
 - (A) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
 - (B) 24 inches from the center of the chair forward;
 - (C) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
 - (D) at least 30 inches of space from the back of each styling chair or esthetics table to the wall of the school.
 - (2) Dispensary – a room or area to organize and maintain supplies, equipment for disinfection of all implements and a sink with hot and cold running water. All cosmetic art schools shall have the required equipment to carry out disinfection procedures per 21 NCAC 14H .0403 and .0404;
 - (3) Theory classroom – a room or area with equipment for theory training appropriate to both practical and theory learning including desks and chairs.
 - (4) Office – administrative office for the secure and locked facilitation of student records and files. This office shall be outfitted with a minimum of one desk and one chair;
 - (5) Reception area – a reception area for clients to wait prior to receiving services;
 - (6) Break room for student use;
 - (7) Restrooms for student and public use;
 - (8) Locker or dressing room – a locker or room for students to secure and lock personal belongings throughout the day; and
 - (9) All stations as defined in Rule .0304 of this Subchapter must be numbered numerically.
 - (c) Each cosmetic art school must display a sign in the reception area. The sign cannot be smaller than 12 inches by 18 inches, with lettering at least one and one half inches in size and must read as follows: "Cosmetic Art School Work Done Exclusively by Students."
 - (d) Each of the requirements listed within this Rule must be located within the same building with the exception of the theory classroom which may be located in an adjacent building or another building within 500 feet of the main cosmetic art building and a proctored examination center, which may be located on the school campus. Theory classrooms located in an adjacent building or another building within 500 feet of the main cosmetic art building shall not be used for student practice.
 - (e) All Cosmetic Art schools must post hours of operation per cosmetic art discipline and submit this information to the Board. Any changes to the hours of operation must be posted and submitted to the Board. A school shall be considered open by the Board when cosmetic art instruction, services or performances are provided.
 - (f) Cosmetic art schools may not offer student hours or performances unless they are in compliance with Paragraph (a) of this Rule.
 - (g) All cosmetic art schools must adhere to any federal, state and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work.
 - (h) All cosmetic art schools must maintain a ventilation system with temperature control. During school operating hours the temperature must be maintained between 60 and 85 degrees Fahrenheit.
 - (i) All equipment in cosmetic art schools shall be in working order; kept in repair; and installed in such a manner as to facilitate usage.
 - (j) All cosmetic art school buildings shall be maintained. Maintenance includes the safe and working condition of the physical building, furniture, equipment and supplies.
 - (k) All cosmetic art schools must maintain a bulletin board in sight of the clinic floor. The bulletin board shall be used to display at all times the Board Infection Control rules in 21 NCAC 14H .0200, .0300, .0400, and .0500 and the sanitation grade card issued to the school.
 - (l) All cosmetic art schools must post together the school letter of approval, the school license and all cosmetic art licenses issued to the teachers on staff.
 - (m) Each room in a cosmetic art school must be labeled according to its assigned purpose.
 - (n) Each theory classroom shall be equipped with desks or chairs suitable for classroom work and one chair suitable for demonstrating cosmetic art practices.
 - (o) When a school and a shop are under the same ownership:
 - (1) separate operation of the shop and school shall be maintained;
 - (2) if the school and shop are located in the same building, they must be separated by a solid wall of at least seven feet in height; separate

entrances and visitor reception areas shall be maintained; and

- (3) the school and shop shall have separate public information releases, advertisements, names and advertising signs.

(p) A cosmetic art school must maintain space and equipment appropriate to both practical and theory learning including desks and chairs, and station requirements so that each student in attendance has a location within which to complete assigned tasks. Each station or desk space shall be designated for only one student at a time.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;

Amended Eff. September 1, 2021; October 1, 2019; January 1, 2016.

21 NCAC 14T .0502 PERMANENT RECORDS, FORMS AND DOCUMENTATION

(a) Cosmetic art schools must maintain locked storage for the permanent files of all enrolled students and students who have withdrawn or graduated together in one room within the approved square footage of the cosmetic art school. Withdrawal and graduation forms reviewed by the Board or an agent of the Board may be removed from this room. The permanent file shall include a copy of:

- (1) Board Enrollment Form;
- (2) Documentation of student receipt of evaluation plans, school policies, school and student contract; the Board Infection Control rules as set forth in 21 NCAC 14H .0200, .0300, .0400, and .0500 and 21 NCAC 14I .0401, and 21 NCAC 14T .0703.
- (3) All Board Withdrawal Forms;
- (4) Social security card for any individual who has a social security number or tax ID card or student visa information;
- (5) Government issued photo ID and proof of date of birth;
- (6) Grades for all examinations and performance evaluation plans. Performance evaluation plans shall be dated, graded, and signed by a teacher;
- (7) Documentation for any leave of absence over 30 days. Documentation shall include an anticipated return date and updated notes every 30 days if the return date exceeds the anticipated return date;
- (8) Transfer of hours form documenting hours earned in other schools and hours accepted by current school; and
- (9) Graduation Form.

(b) The school shall keep onsite, records of hours earned daily including field trip hours and documentation of field trip hours updated with a running grand total, as well as a total of the following through the prior week:

- (1) A daily record of the actual number of hours of attendance;

- (2) A daily record of the actual number of hours and educational achievements completed via online;

- (3) An updated Performance evaluation plan showing the actual date of the performance and the teacher who approved the performance evaluation plan; and

- (4) A record of hours and subtotaled weekly.

(c) When a student enrolled in a cosmetic art school withdraws from the school, the cosmetic art school shall report the withdrawal to the Board.

(d) If a student withdraws from a cosmetic art discipline within the first five days, the school need not submit the enrollment to the Board. The unsubmitted enrollment must be maintained in the student file until reviewed by the Board or an agent of the Board after which, it may be removed.

(e) The graduation form documentation must be signed by on site school staff or on site school administrators and must have the seal of the school affixed. The original graduation form documentation must be prepared on the Board form and shall indicate that the applicable requirement of this Chapter have been met. The cosmetic art school shall mail the graduation form to the Board at the Board's address set forth in Rule 14A .0104 or submit the graduation form via the Board's school documents portal at www.ncccosmeticarts.com within 30 days of the student's graduation date.

(f) All forms submitted to the Board must be sealed originals or a digital scan of sealed originals and a copy shall be maintained in the school permanent file storage. Except for student signatures, all forms submitted to the Board must be completed by on site school staff or on site school administrators. Board forms shall be used for the sole purpose of documenting to the Board student records and shall not be used to notify students of enrollment, transfer of hours, withdrawal, or graduation.

(g) Changes or corrections made by the school to any Board form must be submitted to the Board with supporting documentation.

(h) All cosmetic art schools must maintain on file at the school an original daily record of enrolled students' hours and performances. This record must be kept in a secured location under lock and key but made available for review by the Board or its agent at any time.

(i) All records kept by a cosmetic art school on a student who has withdrawn or graduated must be kept in the school's locked files for future reference until the date the student is accepted for the Board examination or five years after the date the student first enrolled in the school, whichever occurs earlier. Forms reviewed by the Board or an agent of the Board may be removed from this room.

(j) The record of all hours and performance evaluation plans must be documented in writing. Credit issued to students that cannot be verified shall be eliminated from the student record by an agent of the Board.

(k) Access to student records must be limited to agents of the Board, teachers, and administrators of the school. Records shall not be altered offsite. Records that are altered must be altered onsite and must have documentation supporting the change attached. The format, school name, and school code on Board forms cannot be altered.

(l) All individuals in a cosmetic art school receiving cosmetic art education, earning hours, or performing or practicing cosmetic art services must be enrolled in the school.

(m) Only teachers reported to the Board as employees of a cosmetic art school may grade practical student examinations and evaluate pass or fail of student performances. Only on site teachers, on site school administrators, or on site school staff shall record student hours and performances, grade examinations, and determine completion and record credit of live model and mannequin performances.

(n) Minimum scores required for examinations and the successful completion of live model and mannequin performances as determined through the school's evaluation plan that is approved by the Board at the time of application shall be disclosed to students at the time of enrollment. Teachers must use the evaluation plan approved by the Board to assess student competency. Passing grades and performances shall not be credited to students who fail to meet the requirements of the evaluation plan.

(o) Cosmetic art schools must provide to each student a copy of school policies and 21 NCAC 14I .0401. The school shall retain for the permanent file a copy of the student's acknowledgement of receipt of these documents.

(p) The names of students with unsatisfied academic obligations shall not be submitted to the Board as graduates but may be submitted as withdrawn.

(q) Cosmetic art schools shall not report to the Board the unsatisfied financial obligations of any cosmetic art student. Cosmetic art schools shall not prevent the graduation of students who have met the Board minimum requirements and passed all school academic requirements.

(r) Records of hours must be rounded to no more than the nearest quarter hour. Cosmetic art schools shall not give or deduct hours or performances as rewards or penalties.

(s) An applicant shall receive credit for instruction taken in another state if the applicant's record is certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records for validity on a case-by-case basis using the documentation provided by the student.

(t) Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form mailed directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performances to the new school in which a student enrolls. Such original documentation shall be submitted to the Board with enrollment. Transfer forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type and total number of live model and mannequin service performances;
- (4) Enrollment date and last date of attendance;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and

(7) School seal.

(u) A student must pass an entrance examination including mannequin evaluations given by the school to which the student is transferring for the hours to be transferred from one cosmetic art school to another.

History Note: Authority G.S. 88B-4; 88B-16;

Eff. January 1, 2012;

Amended Eff. January 1, 2014; June 1, 2013;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;

Amended Eff. September 1, 2021; September 1, 2020; October 1, 2019; December 1, 2016.

21 NCAC 14T .0616 ADDITIONAL HOURS

(a) Notwithstanding any other rule in this Subchapter, pursuant to G.S. 88B-18(d) a cosmetologist, apprentice, esthetician, manicurist, natural hair care specialist, or teacher candidate who has failed either section of the examination three times, shall complete the following amounts of study at an approved cosmetic art school before an applicant may reapply:

- (1) Cosmetologist 100 hours;
- (2) Apprentice 75 hours;
- (3) Esthetician 40 hours;
- (4) Manicurist 20 hours;
- (5) Natural Hair Care Specialist 20 hours; and
- (6) Teacher:
 - (A) cosmetology 100 hours;
 - (B) esthetician 80 hours; and
 - (C) manicurist 40 hours.

(b) Schools shall evaluate students returning to complete additional hours in accordance with Paragraph (a) of this Rule and shall provide remedial assistance or training in the areas of deficiency.

(c) Additional hours as required in Paragraph (a) of this Rule may be completed through online study or instruction.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; 88B-18;

Eff. January 1, 2012;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;

Amended Eff. September 1, 2021; August 1, 2014.

21 NCAC 14T .0706 SCHOOL APPROVAL CHANGES AND SCHOOL CLOSING

(a) If the location of a cosmetic art school changes or if there is a transfer of majority ownership of a cosmetic art school, whether by sale, lease, or otherwise, the school owner shall submit a new application for approval in accordance with Rule .0102 of this Subchapter.

(b) License and letters of approval issued to cosmetic art schools are not transferrable, and are valid only for the location, square footage, and enrollment capacity for which issued, and to the owner to whom issued. The letter of approval shall contain the school name, school owner name, school location, date of approval, the signature of the Board members, the amount of approved square footage, and the maximum number of enrollments for which the school has been approved.

- (c) Schools intending to close must notify the Board not less than 30 days in advance.
- (d) Schools must make provisions for the long term storage of school documents as set forth in Rule .0502 of this Subchapter, and facilitate the retrieval of any school documents upon the request of a student or the Board. Schools shall notify the Board of the contact information for retrieval of any school information.
- (e) Schools must facilitate and cooperate in the final inspection and processing of student hours.
- (f) If the square footage or instructional layout of a cosmetic art school changes, the school shall notify the Board of the change and submit a diagram of the new instructional layout. Following receipt of the notification of the change in the instructional layout or square footage, a Board inspector shall verify the change.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. September 1, 2021.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0317 ADMINISTRATION

- (a) The controlling institution of a nursing program shall provide human, physical, technical, and financial resources and services essential to support program processes and outcomes, including those listed in Paragraph (f) and (g) of this Rule, and maintain compliance with Section .0300 of this Chapter.
- (b) The controlling institution shall ensure that a full-time registered nurse, qualified pursuant to Paragraph (e) of this Rule, has the authority to direct the nursing program. Full-time registered nurse is a registered nurse employed by the institution who is regularly assigned to work at least 40 hours each week in the position of program director.
- (c) The controlling institution shall ensure that the program director has the authority and responsibility for maintaining compliance with the Rules in this Chapter and other legal requirements in all areas of the program.
- (d) The controlling institution shall ensure that the program director has non-teaching time sufficient to allow for program organization, administration, continuous review, planning, and development.
- (e) The program director in a program preparing students for initial nurse licensure shall satisfy the following requirements:
 - (1) hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina;
 - (2) have two years of full-time experience as a faculty member in a Board-approved nursing program;
 - (3) be experientially qualified, having clinical nursing experience, experience as a faculty member in a nursing program, and academic or nursing leadership experience to lead the program to accomplish the mission, goals, and expected program outcomes;

- (4) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution. If newly employed on or after January 1, 2016, hold a graduate degree from an accredited institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from an accredited institution;
- (5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to the program director role. Once completed, this education need not be repeated if employing organization is changed. This education may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of Board-approved continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of graduate course work in adult learning and learning principles;
 - (D) national certification in nursing education; or
 - (E) documentation of completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval shall include content in the faculty role in curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty performance.
- (6) maintain competence in the areas of assigned responsibility; and
- (7) have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.
- (f) A nursing education program shall implement, for quality improvement, a comprehensive program evaluation that shall include the following:
 - (1) students' achievement of program outcomes;
 - (2) evidence of program resources, including fiscal, physical, human, clinical, and technical learning resources; student support services; and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
 - (3) measures of program outcomes for graduates;
 - (4) evidence that accurate program information for the public is available;
 - (5) evidence that the controlling institution and its administration support program outcomes;
 - (6) evidence that program director and program faculty meet Board qualifications and are

- sufficient in number to achieve program outcomes;
- (7) evidence that collected evaluative data is used in implementing quality improvement activities; and
- (8) evidence of student participation in program planning, implementation, evaluation, and continuous improvement.

(g) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across mediums, and accessible by the public. The following shall be accessible to all applicants and students:

- (1) admission policies and practices;
- (2) policy on advanced placement and transfer of credits;
- (3) the number of credits required for completion of the program;
- (4) tuition, fees, and other program costs;
- (5) policies and procedures for withdrawal, including refund of tuition or fees;
- (6) the grievance procedure;
- (7) criteria for successful progression in the program, including graduation requirements; and
- (8) policies for clinical performance.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. June 1, 1992; Amended Eff. December 1, 2016; January 1, 2015; April 1, 2008; March 1, 2006; Readopted Eff. January 1, 2019; Amended Eff. September 1, 2021.

21 NCAC 36 .0318 FACULTY

(a) Policies for nursing program faculty members shall be consistent with those for other faculty of the controlling institution, with variations as needed due to the nature of the nursing curriculum.

(b) Fifty percent or more of the nursing faculty shall hold a graduate degree.

(c) Nurses licensed pursuant to this Chapter who are full-time and part-time faculty and who teach in a program leading to initial licensure as a nurse shall:

- (1) hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina;
- (2) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;
- (3) have two calendar years or the equivalent of full-time clinical experience as a registered nurse. Full-time registered nurse is a registered nurse employed by the institution who is regularly assigned to work at least 40 hours each week in the position of faculty member;
- (4) if newly employed in a full-time faculty position on or after January 1, 2016, hold a graduate degree from an accredited institution

or obtain a graduate degree in nursing from an accredited institution within five years of initial full-time employment;

- (5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to faculty assignment. Once completed, this education need not be repeated if the employing organization is changed. This education may be demonstrated by one of the following:

- (A) completion of 45 contact hours of Board-approved continuing education courses;
- (B) completion of a certificate program in nursing education;
- (C) nine semester hours of graduate course work in adult learning and learning principles;
- (D) national certification in nursing education; or
- (E) documentation of completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval shall include content in the faculty role in the curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty performance.

- (6) maintain competence in the areas of assigned responsibility; and

- (7) have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.

(d) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation, including a conferred degree, with applicable licensure or certification in the content area they are teaching.

(e) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold an active unencumbered license to practice as a registered nurse in North Carolina.

(f) Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(g) Nurse faculty members shall be academically qualified and sufficient in number to implement the curriculum as required by the course objectives, the levels of the students, the nature of the

learning environment, and to provide for teaching, supervision, and evaluation.

(h) The faculty-student ratio for faculty-directed preceptor clinical experiences shall be no greater than 1:15. The faculty-student ratio for all other clinical experiences shall be no greater than 1:10.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83;

Eff. February 1, 1976;

Amended Eff. December 1, 2016; January 1, 2015; August 1, 2011; November 1, 2008; July 1, 2006; July 1, 2000; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984;

Readopted Eff. January 1, 2019;

Amended Eff. September 1, 2021.

CHAPTER 66 - VETERINARY MEDICAL BOARD

21 NCAC 66 .0211 VETERINARY TELEMEDICINE

(a) "Veterinary telemedicine" or "telemedicine" means the use of electronic or telecommunication technologies to remotely provide medical information regarding a patient's clinical health status and to deliver veterinary medical services to a patient that resides in or is located in the State. The delivery of veterinary medical services through telemedicine is the practice of veterinary medicine.

(b) A veterinarian may provide veterinary medical services via telemedicine to a patient only after establishing a Veterinarian-Client-Patient-Relationship (VCPR). No person shall practice veterinary telemedicine except a veterinarian within the context of a VCPR. A VCPR cannot be established by any electronic means or telecommunication technologies.

(c) "Veterinary telemonitoring" occurs when any person, licensed or unlicensed, utilizes a medical device, smart phone, monitoring sensor, or other technology, in combination with an Internet connection, to collect and store health information for a patient of the veterinarian and to transmit it to a veterinarian, as directed or requested by a veterinarian.

(d) "Veterinary Teleconsulting" occurs when any person, licensed or unlicensed, whose expertise the veterinarian believes would benefit the veterinarian's patient, provides advice or other information by any method of communication to a veterinarian at the veterinarian's direction or request.

(e) Veterinarians practicing telemedicine shall be held to the same standard of care as veterinarians providing in-person medical care. Veterinarians shall use their professional judgement to determine whether telemedicine is appropriate and in the best interest of the patient. Veterinarians shall maintain a medical record of the telemedicine patient(s) as required by 21 NCAC 66 .0207(b)(12).

History Note: G.S. 90-186(10);

Eff. September 1, 2021.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission October 21, 2021 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeanette Doran (Chair)
Robert A. Bryan, Jr. (2nd Vice Chair)
Margaret Currin
Jeff Hyde
Robert A. Rucho

Appointed by House

Andrew P. Atkins (1st Vice Chair)
Barbara A. Jackson
Randy Overton
Paul Powell

COMMISSION COUNSEL

Amber Cronk May 984-236-1936
Amanda Reeder 984-236-1939

RULES REVIEW COMMISSION MEETING DATES

October 21, 2021 December 16, 2021
November 18, 2021 January 20, 2022

AGENDA

RULES REVIEW COMMISSION

THURSDAY, OCTOBER 21, 2021, 9:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Department of Insurance - 11 NCAC 04 .0115, .0117, .0118, .0119, .0120, .0123, .0124, .0312, .0313, .0314, .0315, .0316, .0317, .0318, .0319, .0320, .0415, .0416, .0420, .0422, .0423, .0426, .0427, .0429, .0431, .0432, .0433, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509 (Reeder)
 - B. Building Code Council - 2020 Electrical Code (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between August 23, 2021 through September 20, 2021
 - Department of Insurance (May)
 - Alarm Systems Licensing Board (Reeder)
 - Coastal Resources Commission (Reeder)
 - Department of Transportation - Division of Motor Vehicles (May)
 - Board of Dental Examiners (Reeder)
 - Board of Pharmacy (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
- VII. Commission Business
 - Next meeting: November 18, 2021

Commission Review
Log of Permanent Rule Filings
August 23, 2021 through September 20, 2021

INSURANCE, DEPARTMENT OF

The rules Subchapter 05B concern the N.C. State Fire Commission including general provisions (.0100); master planning (.0200); certification of fire service personnel (.0300); fire incident reporting (.0400); and central information office (.0500).

Minimum Professional Qualifications 11 NCAC 05B .0301
Readopt without Changes*

The rules in Subchapter 5D concern pyrotechnics.

Report of Theft or Loss of Pyrotechnics 11 NCAC 05D .0113
Readopt without Changes*

Report of Injury or Property Damage 11 NCAC 05D .0114
Readopt without Changes*

Inspections 11 NCAC 05D .0115
Readopt without Changes*

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 17 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); provisions for licensees (.0200); provisions for registrants (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

Application for License 14B NCAC 17 .0201
Amend*

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7K set out activities in areas of environmental concern (AECs) which do not require a Coastal Area Management Act (CAMA) permit. These include activities that are not considered development (.0100); exempt minor maintenance and improvement (.0200); and exempt federal agency activities (.0400).

Statutory Exceptions from the Definition of Development 15A NCAC 07K .0101
Readopt without Changes*

Maintenance and Repair 15A NCAC 07K .0103
Readopt without Changes*

Exemption: Projects Requiring Dredge: Fill: State Easement 15A NCAC 07K .0202
Readopt without Changes*

Exemptions for Projects Requiring Air Quality Permit 15A NCAC 07K .0204
Readopt without Changes*

Exemptions for Projects Requiring the NPDES 15A NCAC 07K .0205
Readopt without Changes*

Small Ditches Exempted 15A NCAC 07K .0206
Readopt without Changes*

Exemption/Accessory Uses/Maintenance Repair/Replacement 15A NCAC 07K .0209
Readopt without Changes*

Nomination Categories Excluded: Minor Permit Exemption 15A NCAC 07K .0210
Readopt without Changes*

Jockey's Ridge AEC 15A NCAC 07K .0211
Readopt without Changes*

<u>Installation and Maintenance of Sand Fencing</u> Readopt without Changes*	15A NCAC 07K .0212
<u>Maintenance of Federal Navigation Channels</u> Readopt without Changes*	15A NCAC 07K .0401
<u>Federal Agency Activities Exempted</u> Readopt without Changes*	15A NCAC 07K .0402

TRANSPORTATION - MOTOR VEHICLES, DIVISION OF

The rules in Subchapter 03A concern general administration.

<u>General Information</u> Adopt*	19A NCAC 03A .0105
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The rules in Chapter 3 concern the Division of Motor Vehicles.

The rules in Subchapter 3B concern the driver license section of the Division of Motor Vehicles including general information (.0100); driver's license issuance (.0200); medical evaluation (.0300); records (.0400); classified drivers' license (.0600); commercial drivers' license (.0700); and gross vehicle weight rating (GVWR) (.0800).

<u>Forms</u> Readopt/Repeal*	19A NCAC 03B .0103
<u>Driver's License Examination and Online Renewal</u> Readopt without Changes*	19A NCAC 03B .0201
<u>Acute or Chronic Illnesses</u> Readopt without Changes*	19A NCAC 03B .0301
<u>Driving Records</u> Readopt without Changes*	19A NCAC 03B .0403
<u>Definitions</u> Readopt without Changes*	19A NCAC 03B .0702
<u>Requirements for Third Party Testers</u> Readopt without Changes*	19A NCAC 03B .0703
<u>Requirements for Third Party Examiners</u> Readopt without Changes*	19A NCAC 03B .0704
<u>Certificates</u> Readopt without Changes*	19A NCAC 03B .0705
<u>Application for Third Party Tester Certification</u> Readopt without Changes*	19A NCAC 03B .0706
<u>Application for Third Party Examiner Certification</u> Readopt without Changes*	19A NCAC 03B .0707
<u>On-Site Inspections and Audits</u> Readopt without Changes*	19A NCAC 03B .0709
<u>Evaluation of Applicants by the Division</u> Readopt without Changes*	19A NCAC 03B .0711
<u>Definition</u> Readopt without Changes*	19A NCAC 03B .0801

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16O concern nitrous-oxide-oxygen conscious sedation including definitions (.0300); and qualification to perform functions (.0400).

<u>Educational Requirements</u> Amend*	21 NCAC 16O .0402
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PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Definitions</u>	21	NCAC	46	.1317
Amend*				
<u>Limited Service Permits</u>	21	NCAC	46	.1616
Adopt*				
<u>Drugs to be Dispensed</u>	21	NCAC	46	.1703
Amend*				
<u>Retrospective Review and Consultation</u>	21	NCAC	46	.1706
Amend*				
<u>Responsibilities of Pharmacist-Manager</u>	21	NCAC	46	.2502
Amend*				