

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .3401

DEADLINE FOR RECEIPT: Friday, January 15, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

On line 7, please state "The following definitions shall apply to this Section:"

In (1), line 8, who is the "authorized agent"? Authorized how and known as authorized by what means?

In (4), line 15, and (9), line 29, what do you mean by "specific"? Is this a designated swimming area?

In (4), line 15, please delete the comma after "but" If you wish to mirror the language in (9), line 30, insert a comma after "inserted"

On line 18, consider replacing "is" with "shall be"

And so that I'm clear – what is the difference between (4) and (9)? Does (9) not involve a resampling?

In (7), who will collect, process, and analyze this? The Division?

In (10), Page 2, line 2, please end the sentence after "amendments."

In (14), why are you defining this term? I don't see it used elsewhere within the Section. Is the intent to make it clear that these months are not part of the swimming season?

In the History Note, line 13, why are you citing to G.S. 113-182?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: January 4, 2021

1 15A NCAC 18A .3401 is readopted as published in 35:03 NCR 175-176 as follows:

2
3 **SECTION .3400 - COASTAL RECREATIONAL WATERS MONITORING, EVALUATION, AND**
4 **NOTIFICATION**
5

6 **15A NCAC 18A .3401 DEFINITIONS**

7 The following definitions shall apply ~~throughout to~~ Section 18A-.3400 of this Subchapter:

8 (1) "Division" means the Division of Marine Fisheries or its authorized agent.

9 ~~(1)(2)~~ "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts
10 of warm-blooded animals that include *Enterococcus faecalis*, *Enterococcus faecium*, *Enterococcus*
11 *avium*, and *Enterococcus gallinarum*.

12 ~~(2)(3)~~ "Geometric mean" means the mean of "n" positive numbers obtained by taking the "~~n~~th-"~~n~~th" root
13 of the product of the numbers with at least five samples collected within a ~~30 day~~ 30-day period.

14 (4) "Pending swimming advisory" means a notification to the public that recommends no primary
15 contact with the water in a specific swimming area when bacteriological limits are exceeded but,
16 does not close a swimming area to the public. A pending swimming advisory shall include a public
17 notification via social media release to notify the public of the risks of swimming in the area. A
18 pending swimming advisory is followed by a resample that will determine if a swimming advisory
19 will be issued.

20 ~~(3)(5)~~ "Point source discharge" means the discharge of liquids through a pipe, drain, ~~ditch-ditch,~~ or other
21 conveyance into a swimming area.

22 ~~(4)(6)~~ "Primary contact" means an activity in water in which a person's head is partially or completely
23 submerged.

24 (7) "Resample" means a water sample that is collected after the results of the initial water sample
25 collected are processed and the results are analyzed.

26 ~~(5)(8)~~ "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant
27 runoff into coastal recreational waters.

28 ~~(6)(9)~~ "Swimming advisory" means a notification to the public that recommends no primary contact with
29 the water in a specific swimming area ~~for public health reasons when bacteriological limits are~~
30 ~~exceeded,~~ but does not close a swimming area to the public. A swimming advisory shall include a
31 sign posted at the site of the advisory and a ~~press release~~ public notification via social media and
32 news release to notify the public of the risks of swimming in the area.

33 ~~(7)~~ "Swimming alert" means a notification to the public by media contact including a press release to
34 warn the public of risks of swimming in an area that exceeds bacteriological swimming area levels.

35 ~~(8)(10)~~ "Swimming area" means a coastal recreation area that is used for primary contact located within
36 waters classified by the Division of Water ~~Quality Resources~~ as SA, SB, or SC. SC, SA, or SB as

1 set forth in 15A NCAC 02B .0220-.0222, and is hereby incorporated by reference including
2 subsequent amendments and editions.

3 (9)(11) "Swimming season" means from April 1 through October 31 of each year.

4 (10)(12) "Tier I swimming area" means a swimming area used daily during the swimming season, ~~including~~
5 ~~any public access swimming area and any other swimming area where people use the water for~~
6 ~~primary contact, including all oceanfront beaches.~~ beaches that are monitored by the Division.

7 (11)(13) "Tier II swimming area" means a swimming area ~~used an average of three days a week that is not~~
8 used daily during the swimming season.

9 (12) ~~"Tier III swimming area" means a swimming area used an average of four days a month during the~~
10 ~~swimming season.~~

11 (13)(14) "Winter season" means from November 1 through March 31 of each year.

12
13 History Note: Authority ~~G.S. 130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52;~~
14 Eff. February 1, 2004;
15 Readopted Eff. April 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .3402

DEADLINE FOR RECEIPT: Friday, January 15, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

In the History Note, line 13, why are you citing to G.S. 113-182?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: January 4, 2021

1 15A NCAC 18A .3402 is readopted as published in 35:03 NCR 176 as follows:

2
3 **15A NCAC 18A .3402 BACTERIOLOGICAL LIMITS FOR SWIMMING AREAS**

4 (a) The enterococcus level in a Tier I swimming area shall not equal or exceed either:

5 (1) ~~A~~a geometric mean of 35 enterococci per 100 ~~milliliter~~ milliliters of water, ~~water; that includes a~~
6 ~~minimum of at least five samples collected within 30 days; or~~

7 (2) ~~A~~a single sample of 104 enterococci per 100 ~~milliliter~~ milliliters of water.

8 (b) The enterococcus level in a Tier II swimming area shall not equal or exceed a single sample of ~~276~~ 104 enterococci
9 per 100 ~~milliliter~~ milliliters of water.

10 ~~(c) The enterococcus level in a Tier III swimming area shall not exceed two consecutive samples of 500 enterococci~~
11 ~~per 100 milliliter of water.~~

12
13 *History Note:* Authority ~~G.S. 130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52;~~

14 *Eff. February 1, 2004;*

15 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .3403

DEADLINE FOR RECEIPT: Friday, January 15, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

In (a)(1), line 15, since you defined "Division" in Rule .3401 as "Division of Marine Fisheries," why do you need to spell it out here? Why not just state "Division"?

On line 17, please delete the comma after "Section"

In (a)(2)(A), line 20, as well as (a)(2)(B), line 23, and (b)(2), line 32, shouldn't "is" before "equal to or exceeds" be "are"?

In (d), Page 2, line 7, what authority are you relying upon for this sign to cite to the authority of the Office of the State Health Director, rather than DEQ?

In the History Note, line 9, why are you citing to G.S. 113-182?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: January 4, 2021

1 15A NCAC 18A .3403 is readopted as published in 35:03 NCR 176-177 as follows:

2
3 **15A NCAC 18A .3403 PUBLIC NOTICE OF INCREASED HEALTH RISKS IN SWIMMING AREAS**

4 (a) Tier I Swimming areas:

5 ~~(1) A swimming advisory shall be issued by the Division when samples of water from a swimming area~~
6 ~~exceeds a geometric mean of 35 enterococci per 100 milliliter during the swimming season.~~

7 ~~(2) A swimming alert shall be issued by the Division when a single sample of water from a swimming~~
8 ~~area exceeds 104 enterococci per 100 milliliter and does not exceed 500 enterococci per 100~~
9 ~~milliliter during the swimming season.~~

10 ~~(3) A swimming advisory shall be issued by the Division when a sample of water from a swimming~~
11 ~~area exceeds a single sample of 500 enterococci per 100 milliliter during the swimming season.~~

12 ~~(4) A swimming advisory shall be issued by the Division when at least two of three concurrent water~~
13 ~~samples collected at a swimming area exceeds 104 enterococci per 100 milliliter during the~~
14 ~~swimming season.~~

15 (1) A pending swimming advisory shall be issued by the Division of Marine Fisheries if a water sample
16 from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2)
17 of this Section, during the swimming season.

18 (2) A swimming advisory shall be issued by the Division if either of the following standards are
19 exceeded during the swimming season:

20 (A) Both the initial water sample and resample collected from a swimming area is equal to or
21 exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section; or

22 (B) The most recent five water samples collected within a 30-day period from a swimming area
23 is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

24 (b) Tier II swimming areas:

25 ~~(1) A swimming alert shall be issued by the Division when a single sample of water from a swimming~~
26 ~~area exceeds 276 enterococci per 100 milliliter and does not exceed 500 enterococci per 100~~
27 ~~milliliter during the swimming season.~~

28 (1) A pending swimming advisory shall be issued by the Division if a water sample from a swimming
29 area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section
30 during the swimming season.

31 (2) A swimming advisory shall be issued by the Division when a single sample if both the initial water
32 sample and resample collected of water from a swimming area is equal to or exceeds 500 enterococci
33 per 100 milliliter the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the
34 swimming season.

35 ~~(c) A Tier III swimming area with a water sample result of 500 enterococci per 100 milliliter or higher on the first~~
36 ~~sample shall be resampled the following day. If the laboratory results of the second sample exceed 500 enterococci~~
37 ~~per 100 milliliter a swimming advisory shall be issued by the Division.~~

1 ~~(d)(c)~~ Signs posted pursuant to this Section shall be placed or erected in open view where the public may see the
2 ~~sign(s)~~ sign prior to entering the water.

3 ~~(e)(d)~~ Signs shall ~~convey state~~ the following:

4 ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA
5 TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS
6 TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN.
7 OFFICE OF THE STATE HEALTH DIRECTOR.

8
9 *History Note: Authority G.S. ~~130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52;~~*

10 *Eff. February 1, 2004;*

11 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .3404

DEADLINE FOR RECEIPT: Friday, January 15, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

In (a), lines 5-6, this reads awkwardly. Consider stating, "The Division shall post at least one sign at a wastewater treatment plant that discharges into swimming waters, which shall stay posted until the discharge is removed."

Throughout this Rule where it states that "at least" number of signs will be posted, who will determine this? The Division? Based upon what – geographical size of the restricted area?

And on lines 5-6, why are you adding "of Marine Fisheries" here, given the definition of "Division" in Rule .3401?

In (a), lines 12-13, (b), lines 18-19, (c), lines 28-29 and lines 33-34, (d), Page 2, lines 2-3, and (e), lines 8-9, what authority are you relying upon for this sign to cite to the authority of the Office of the State Health Director, rather than DEQ?

In (c), line 21, and elsewhere you refer to a "drain" – is that the "pipe" in the sign? If so, then how will the sign in (c), lines 30 – 34 work, as this Paragraph also applies to storm water discharge? Or will storm water discharge also come from a pipe?

In (e), Page 2, line 5, I take it your regulated public knows what "dredge material" is?

In the History Note, line 11, why are you citing to G.S. 113-182?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: January 4, 2021

1 15A NCAC 18A .3404 is readopted as published in 35:03 NCR 177 as follows:

2
3 **15A NCAC 18A .3404 SWIMMING ADVISORIES FOR POINT SOURCE DISCHARGES INTO**
4 **SWIMMING AREAS**

5 (a) A wastewater treatment plant that discharges into swimming waters shall be posted by the Division of Marine
6 Fisheries with at least one sign until the discharge is removed. The ~~sign(s)~~ sign for a wastewater treatment plant
7 discharge shall ~~convey~~ state the following:

8 ~~ATTENTION: THESE WATERS MAY BE CONTAMINATED BY HUMAN OR ANIMAL~~
9 ~~WASTE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE~~
10 ~~INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.~~
11 WARNING! SEWAGE TREATMENT EFFLUENT DISCHARGE SITE. SWIMMING IS NOT
12 ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE
13 OF THE STATE HEALTH DIRECTOR.

14 (b) A swimming advisory shall be issued by the Division and at least one sign shall be posted at the public
15 access to swimming waters that have been impacted by a wastewater system failure. The sign for waters
16 impacted by a wastewater spill shall state the following:

17 WARNING! WASTEWATER SPILL. SWIMMING IS NOT ADVISED IN THESE WATERS
18 BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH
19 DIRECTOR.

20 ~~(b)(c)~~ A swimming advisory shall be issued by the Division and at least ~~two signs~~ one sign shall be posted at a storm
21 drain or storm water discharge that is ~~actively~~ discharging into a Tier 1 swimming area. ~~Signs~~ A sign shall be placed
22 to advise the public as they enter the area impacted by the ~~drain~~ storm drain or storm water discharge. For dry weather
23 ~~discharges, The signs~~ the sign for a storm drain or storm water discharge shall ~~convey~~ state the following:

24 ~~SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE~~
25 ~~CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH~~
26 ~~DIRECTOR.~~
27 WARNING! STORM WATER DISCHARGE AREA. SWIMMING WITHIN 200 YARDS OF
28 THIS SIGN MAY INCREASE THE RISKS OF WATERBORNE ILLNESS. OFFICE OF THE
29 STATE HEALTH DIRECTOR.

30 For wet weather discharges, the sign shall state the following:

31 WARNING! STORM WATER DISCHARGE AREA. WATERS MAY BE CONTAMINATED BY
32 DISCHARGE FROM PIPE. SWIMMING IS NOT RECOMMENDED WITHIN 200 YARDS OF THIS
33 SIGN DURING ACTIVE DISCHARGE. FOR MORE INFORMATION, CALL 252-726-6827. OFFICE OF
34 THE STATE HEALTH DIRECTOR.

35 ~~(e)(d)~~ A swimming advisory shall be issued by the Division and at least two signs shall be posted at a storm drain
36 where flood waters are being pumped into a swimming area. ~~The signs shall remain posted for at least 24 hours after~~
37 ~~the pumping of flood waters has ceased.~~ The signs shall ~~convey~~ state the following:

1 SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE
2 CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH
3 DIRECTOR.

4 ~~(d)~~(e) A swimming advisory shall be issued by the Division and at least two signs shall be posted at an area receiving
5 dredge material on a swimming beach ~~when~~ if the dredge material is being pumped from an area closed to shellfish
6 harvesting. The signs shall ~~convey~~ state the following:

7 SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE
8 CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH
9 DIRECTOR.

10
11 *History Note: Authority G.S. ~~130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52;~~*
12 *Eff. January 1, 2004;*
13 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .3405

DEADLINE FOR RECEIPT: Friday, January 15, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

In (a), line 6, should this read “meets the bacteriological limit...”?

Please end (b)(1), line 11, with a semicolon, rather than a period, and state “Section; and”

If you do that, consider making the first words in (b)(1) and (2) lowercase.

In (b)(2), line 12, so that I’m clear – what you are requiring is one sample for two weeks in a row meeting the requirement?

In (d), will the signs required by Rule .3404(d) and (e) not be removed?

In the History Note, line 26, why are you citing to G.S. 113-182?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: January 4, 2021

1 15A NCAC 18A .3405 is readopted as published in 35:03 NCR 177-178 as follows:

2
3 **15A NCAC 18A .3405 RESCINDING A PENDING SWIMMING ADVISORY OR SWIMMING ALERT**
4 **ADVISORY**

5 (a) A pending swimming advisory shall be rescinded by the Division of Marine Fisheries via social media release
6 when the resample collected meets bacteriological limit set forth in Rule .3402(a)(2) of this Section.

7 ~~(a)(b) A Tier I swimming area advisory shall be rescinded by the Division via social media and news release, including~~
8 ~~the removal of signs, when two consecutive weekly water samples and the geometric mean meet the bacteriological~~
9 ~~limits in Rule 18A .3402(a) of this Section. A swimming alert shall be rescinded within 24 hours of compliance with~~
10 ~~Rule 18A .3402(a)(2) of this Section. both of the following conditions are met:~~

11 (1) The geometric mean has met the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

12 (2) Two consecutive weekly water samples meet the bacteriological limit set forth in Rule .3402(a)(2)
13 of this Section.

14 ~~(b)(c) A Tier II or Tier III swimming area advisory or alert shall be rescinded by the Division via social media and~~
15 ~~news release, including the removal of signs, after water samples meet the bacteriological standard in Rule 18A~~
16 ~~.3402(b) or (c) of this Section. limit set forth in Rule .3402(b) of this Section.~~

17 ~~(c)(d) A swimming advisory resulting from a point source flood water discharge or the discharge of dredge material~~
18 ~~shall be rescinded by the Division via social media and news release 24 hours after the discharge has ceased. ceased,~~
19 ~~to allow for tidal dispersion.~~

20 (e) A swimming advisory resulting from a wastewater system failure shall be rescinded by the Division via social
21 media and news release, including the removal of signs, when failure has been corrected and water samples collected
22 meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

23 ~~(d) When a swimming advisory or alert has been rescinded, the Division shall issue a press release to announce the~~
24 ~~lifting of the advisory or the alert and the sign(s) shall be removed immediately by the Division.~~

25
26 *History Note: Authority G.S. ~~130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52;~~*
27 *Eff. January 1, 2004;*
28 *Readopted Eff. April 1, 2021.*

1 15A NCAC 18A .3406 - .3407 are repealed through readoption as published in 35:03 NCR 178 as follows:

2

3 **15A NCAC 18A .3406 DESTRUCTION OF SIGNS**

4 **15A NCAC 18A .3407 APPLICABILITY OF RULES**

5

6 *History Note: Authority G.S. 130A-233.1;*

7 *Eff. January 1, 2004;*

8 *Repealed Eff. April 1, 2021.*