

1 15A NCAC 03H .0103 is amended with changes as published in 31:07 NCR 586 as follows:

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3 **15A NCAC 03H .0103 PROCLAMATION AUTHORITY OF FISHERIES**
4 **DIRECTOR PROCLAMATIONS, GENERAL**

5 (a) It is unlawful to violate the provisions of any a proclamation issued by the authority pursuant to a rule of the
6 Marine Fisheries Commission Rule. [rule.] Commission, as provided in G.S. 113-221.1.

7 (b) ~~Unless~~ If specific variable conditions are not set forth in a rule ~~granting of the Marine Fisheries Commission that~~
8 ~~grants proclamation authority to the Fisheries Director, [possible -] variable conditions triggering the use of the~~
9 ~~Fisheries Director's proclamation authority may include any of the following;~~ the Fisheries Director shall consider the
10 following variable conditions in exercising proclamation authority:

- 11 (1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
- 12 (2) biological impacts;
- 13 (3) environmental conditions;
- 14 (4) compliance with Fishery Management Plans;
- 15 (5) user conflicts;
- 16 (6) bycatch issues; ~~and~~
- 17 (7) variable spatial ~~distributions~~-distributions; and
- 18 (8) protection of public health related to the public health programs that fall under the authority of the
19 Marine Fisheries Commission.

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21 *History Note: Authority G.S. 113-134; 113-135; 113-182; 113-221.1; 113-221.2; 113-221.3; 143B-289.52;*
22 *Eff. January 1, 1991;*
23 *Amended Eff. March 1, 1994; September 1, 1991;*
24 *Temporary Amendment Eff. July 1, 1999;*
25 *Amended Eff. May 1, 2017; April 1, 2011; August 1, 2000.*

1 15A NCAC 03J .0104 is amended with changes as published in 31:07 NCR 586-587 as follows:

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3 **15A NCAC 03J .0104 TRAWL NETS**

4 (a) It is unlawful to possess aboard a vessel while using a trawl ~~net in internal waters~~ Internal Coastal Waters more
5 than 500 pounds of finfish from December 1 through ~~February 28,~~ March 1, and 1,000 pounds of finfish from March
6 ~~1-2~~ through November 30.

7 (b) It is unlawful to use trawl nets:

8 (1) ~~In internal coastal waters, in Internal Coastal~~ Waters, Waters from 9:00 p.m. on Friday through
9 5:00 p.m. on Sunday, ~~except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is~~
10 ~~prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour~~
11 ~~before sunrise on Monday; except:~~

12 (A) ~~from December 1 through March 1 from one hour after sunset on Friday to one hour before~~
13 ~~sunrise on Monday in the areas listed in Subparagraph (b)(5) of this Rule;~~ and or

14 (B) ~~for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A~~
15 ~~NCAC 03O .0503;~~

16 (2) ~~For~~ for the taking of oysters;

17 (3) ~~In in~~ Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south
18 shore of Long Point at a point 36° 02.4910' N – 75° 44.2140' W; running southerly to the north shore
19 on Roanoke Island to a point 35° 56.3302' N – 75° 43.1409' W; running northwesterly to Caroon
20 Point to a point 35° 57.2255' N – 75° 48.3324' W;

21 (4) ~~In in~~ the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by
22 proclamation, open the area designated in Item (1) of 15A NCAC 03R .0106 to peeler crab trawling;

23 (5) ~~From from~~ December 1 through ~~February 28~~ March 1 from one hour after sunset to one hour before
24 sunrise in the following areas:

25 (A) ~~In in~~ Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N –
26 76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N – 76°
27 34.5135' W;

28 (B) ~~In in~~ Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N –
29 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76°
30 35.9333' W;

31 (C) ~~In in~~ Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76°
32 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;

33 (D) ~~In in~~ Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry
34 at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side
35 of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and

36 (E) ~~In in~~ New River, all waters upstream of the N.C. Highway 172 Bridge when opened by
37 proclamation; and

- (6) ~~In~~ in designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), ~~(a)(8)-(a)(8)~~, and (a)(9) within an area bound by the shoreline to the depth of six feet.
- (c) ~~Minimum mesh-Mesh~~ sizes for shrimp and crab ~~trawls are presented~~ ~~provided~~ ~~in trawl nets shall meet the requirements of~~ 15A NCAC 03L .0103 and .0202.
- (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.
- (e) It is unlawful to use shrimp ~~trawls-trawl nets~~ for recreational purposes unless the trawl ~~net~~ is marked by attaching to the codend ~~(tailbag)-(tailbag)~~ one floating buoy, any shade of hot pink in color, which 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 shall ~~always~~ be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials ~~and-and~~, if a vessel is used, one of the following:
- (1) gear owner's current motor boat registration number; or
 - (2) owner's U.S. vessel documentation name.
- (f) It is unlawful to use shrimp ~~trawls-trawl nets~~ for the taking of blue crabs in ~~internal waters~~, Internal Coastal Waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:
- (1) ~~For-for~~ individuals using shrimp ~~trawls-trawl nets~~ authorized by a Recreational Commercial Gear License, 50 blue ~~crabs-crabs per day~~, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on ~~board-board~~ ~~a~~ the same vessel; and
 - (2) ~~For-for~~ commercial operations, crabs may be taken incidental to lawful shrimp trawl ~~net~~ operations provided that the weight of the crabs shall not exceed the greater of:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;
Eff. February 1, 1991;
Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. May 1, 2017; April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August 1, 2000.

1 15A NCAC 03K .0110 is amended with changes as published in 31:07 NCR 587 as follows:

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3 **15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS**
4 **SCALLOPS, AND MUSSELS**

5 ~~(a) To protect public health, the Fisheries Director may, by proclamation, impose any or all of the following~~
6 ~~restrictions on oysters, clams, scallops, and mussels to ensure the sale or distribution of shellfish from approved areas~~
7 ~~or shellstock dealers as defined in Rule 15A NCAC 18A .0301 and to ensure that shellfish have not been adulterated~~
8 ~~or mislabeled during cultivation, harvesting, processing, storage and transport, in compliance with the National~~
9 ~~Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance:~~

10 (a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance
11 (Model Ordinance) includes [minimum] requirements for the sale or distribution of shellfish from approved areas or
12 shellstock dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or
13 mislabeled during cultivation, harvesting, processing, storage, or transport. ~~during:~~

14 ~~(1) — cultivation;~~

15 ~~(2) — harvesting;~~

16 ~~(3) — processing;~~

17 ~~(4) — storage; and~~

18 ~~(5) — transport.~~

19 ~~(b)] To protect public~~ [health and to address variable conditions of the Model Ordinance, health, the Fisheries
20 Director may, by proclamation, impose requirements of the Model Ordinance as set forth in Paragraph ~~(e)-(b)~~ of this
21 Rule on any of the following:

22 (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport of

23 (A) oysters;

24 ~~(2)]~~ (B) clams;

25 ~~(3)]~~ (C) scallops; or

26 ~~(4)]~~ (D) mussels;

27 ~~(5)]~~ (2) areas used to store shellfish;

28 ~~(6)]~~ (3) means and methods to take shellfish;

29 ~~(7)]~~ (4) vessels used to take shellfish; ~~and~~ or

30 ~~(8)]~~ (5) shellstock conveyances as defined in 15A NCAC 18A .0301.

31 ~~(e)]~~ (b) Proclamations issued under this Rule may impose any of the following requirements:

32 (1) specify time and temperature controls;

33 (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301,
34 or cross-contamination or adulteration of shellfish;

35 ~~(2)]~~ (3) specify sanitation control procedures as specified set forth in 21 Code of Federal Regulations (CFR)
36 Part 123.11;

(3)(4) specify Hazard Analysis Critical Control Point (HACCP) requirements ~~as specified set forth~~ in 21 CFR Part:

- (A) 123.3 Definitions;
- (B) 123.6 HACCP Plan;
- (C) 123.7 Corrective Actions;
- (D) 123.8 Verification;
- (E) 123.9 Records; and
- (F) 123.28 Source Controls;

(4)(5) specify tagging and labeling requirements;

(5)(6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;

(6)(7) require sales records and collection and submission of information to provide a mechanism for ~~tracing~~ shellfish product ~~to be traced~~ back to the water body of origin; and

(7)(8) require ~~implicated~~ product recall and specify recall procedures.

~~[21 CFR 123.3 (2015), 123.6-9 (1997), 123.11 (2015), and 123.28 (1997)] 21 CFR 123.3, 123.6-9, 123.11, and 123.28 are hereby incorporated by [reference.]reference, including subsequent amendments and editions. A copy of the reference materials can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ccda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl, free of charge. [A copy of the CFR in effect on the date of this Rule can be found at <http://portal.nedcnr.org/web/mf/rules-and-regulations>, free of charge.]~~

(b)(4)(c) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52; Eff. April 1, 2014; Amended Eff. May 1, 2017.

1 15A NCAC 03K .0201 is amended with changes as published in 31:07 NCR 588 as follows:

2
3 **15A NCAC 03K .0201 OPEN SEASON AND POSSESSION LIMIT OYSTER HARVEST**
4 **MANAGEMENT**

5 (a) It is unlawful to take or possess oysters from public bottoms-bottom except from October 15 through March 31.

6 (b) The Fisheries Director may, by proclamation, close and open the season within the time period stated herein or
7 close and open any of the various waters to the taking of oysters depending on the need to protect small oysters and
8 their habitat, the amount of saleable oysters available for harvest, the number of days harvest is prevented due to
9 unsatisfactory bacteriological samples and weather conditions, and the need to prevent loss of oysters due to
10 parasitic infections and thereby reduce the transmission of parasites to uninfected oysters or other variable
11 conditions and may impose any or all of the following restrictions on the taking of commercial and recreational
12 oyster harvest:oysters:

13 (1) Specify days of the week harvesting will be allowed;specify time;

14 (2) Specify areas; specify area;

15 (3) Specify-specify means and methods which may be employed in the taking;methods;

16 (4) Specify time period;specify season within the period set forth in Paragraph (a) of this Rule;

17 (5) Specify the quantity, but shall not exceed possession of more than 50 bushels in a commercial
18 fishing operation; and

19 (6) Specify the minimum size limit by shell length, but not less than 2 1/2 inches.

20 (5) specify size, but the minimum size limit specified shall not be less than three inches, except the
21 minimum size limit specified shall not be less than two and one-half inches to prevent loss of
22 oysters due to predators, pests, or infectious oyster diseases; and

23 (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard U.S.
24 bushels in a commercial fishing operation per day.

25
26 *History Note: Authority G.S. 113-134; 113-182; 113-201; ~~113-221~~; 113-221.1; 143B-289.52;*

27 *Eff. January 1, 1991;*

28 *Amended Eff. May 1, 2017; October 1, 2008; March 1, 1996; September 1, 1991.*

1 15A NCAC 03K .0202 is amended with changes as published in 31:07 NCR 588 as follows:

2
3 **15A NCAC 03K .0202 ~~SIZE LIMIT AND CULLING TOLERANCE~~CULLING REQUIREMENTS FOR**
4 **OYSTERS**

5 (a) It is unlawful to possess oysters which have accumulated dead shell, accumulated oyster cultch material, a shell
6 length less than that specified by ~~proclamation,~~ proclamation issued under the authority of Rule .0201 of this Section,
7 or any combination thereof that exceeds a ~~10 percent~~ five-percent tolerance limit by volume. In determining whether
8 the tolerance limit is exceeded, the Fisheries Director ~~and or~~ and his agents may grade all, ~~or~~ any portion, or any
9 combination of portions of the entire quantity being ~~graded, and graded and,~~ graded, in cases of violations, may seize and
10 return to public bottom or otherwise dispose of the oysters as authorized by law.

11 (b) All oysters shall be culled ~~by the catcher~~ where harvested and all oysters of less than legal size, accumulated dead
12 ~~shell-shell,~~ shell and cultch ~~material, material~~ shall be immediately returned to the bottom from which it was taken.

13 (c) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants
14 ~~currently~~ permitted by the ~~Shellfish Sanitation Section of the Division of Environmental Health,~~ Division of Marine
15 Fisheries.

16
17 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*
18 *Eff. January 1, 1991;*
19 *Amended Eff. March 1, 1996; September 1, 1991;*
20 *Temporary Amendment Eff. July 1, 1999;*
21 *Amended Eff. May 1, 2017; August 1, 2000.*

1 15A NCAC 03K .0302 is amended with changes as published in 31:07 NCR 588-589 as follows:

2
3 **15A NCAC 03K .0302 ~~MECHANICAL HARVEST SEASON~~MECHANICAL HARVEST OF CLAMS**
4 **FROM PUBLIC BOTTOM**

5 (a) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods as defined in 15A NCAC 03I
6 .0101, "mechanical methods for clamming," from public bottom unless the season is open.

7 (b) ~~except that the~~ The Fisheries Director may, by proclamation, open and close the season for the taking of clams by
8 mechanical methods from public bottom at any time in the Atlantic Ocean and only ~~between from~~ December 1 through
9 March 31 in Internal Coastal Waters, ~~internal waters for the use of mechanical clam harvesting gear. The Fisheries~~
10 ~~Director is further empowered to impose any or all of the following restrictions:~~

11 (1) ~~specify number of days;~~

12 (2) ~~specify areas;~~

13 (3) ~~specify time period;~~

14 (4) ~~specify quantity or size; and~~

15 (5) ~~specify means/methods. Any proclamation specifying means or methods must be approved by the~~
16 ~~Marine Fisheries Commission prior to issuance.~~

17 ~~(b)(c)~~ The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public
18 bottom during open seasons only areas that ~~[have been]~~ were opened at any time from January 1979 through
19 September 1988 in:

20 (1) Newport, North, White Oak, and New rivers;

21 (2) Core and Bogue sounds;

22 (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and

23 (4) the Atlantic Ocean.

24 ~~in Core and Bogue Sounds, Newport, North, White Oak and New Rivers and the Intracoastal Waterway north of "BC"~~
25 ~~Marker at Topsail Beach which have been opened at any time from January, 1979, through September, 1988, to the~~
26 ~~harvest of clams by mechanical methods. The Fisheries Director may, by proclamation, open the Atlantic Ocean and~~
27 ~~the area or any portion of the area in Pamlico Sound bounded by a line beginning on Portsmouth Island at a point 35°~~
28 ~~01.5000' N 76° 06.0000' W; running northerly to a point 35° 06.0000' N 76° 06.0000' W; running westerly to a~~
29 ~~point 35° 06.0000' N 76° 10.0000' W; running southerly to a point 35° 01.5000' N 76° 10.0000' W; running easterly~~
30 ~~to the point of beginning to the harvest of clams by mechanical methods. Other areas opened for purposes as set out~~
31 ~~in 15A NCAC 03K .0301(b) shall open only for those purposes. A list of areas as described in this Paragraph is~~
32 ~~available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC~~
33 ~~28557.~~

34 (d) The Fisheries Director may, by proclamation, impose any ~~[or all]~~ of the following additional restrictions for the
35 taking of clams by mechanical methods from public bottom during open seasons:

36 (1) specify time;

37 (2) specify means and methods;

1 (3) specify size; and

2 (4) specify quantity.

3

4 *History Note:* *Authority G.S. 113-134; 113-182; ~~113-221~~; 113-221.1; 143B-289.52;*

5 *Eff. January 1, 1991;*

6 *Temporary Amendment Eff. October 1, 2001;*

7 *Amended Eff. May 1, 2017; April 1, 2003.*

1 15A NCAC 03L .0102 is amended with changes as published in 31:07 NCR 589 as follows:

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3 **15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED**

4 It is unlawful to take shrimp by any method from 9:00 ~~P.M.~~p.m. on Friday through 5:00 ~~P.M.~~p.m. on Sunday, except:

5 (1) in the Atlantic Ocean;~~or~~

6 (2) with the use of fixed and channel nets, hand seines, shrimp ~~pots and pots, or~~ cast ~~nets, nets;~~ and or

7 (3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O
8 .0503.

9
10 *History Note:* Authority G.S. 113-134; 113-182; ~~113-221~~; 143B-289.52;

11 *Eff. January 1, 1991;*

12 *Amended Eff. May 1, 2017; August 1, 2004; March 1, 1994.*

1 15A NCAC 03M .0522 is adopted as published in 31:07 NCR 589 as follows:

2
3 **15A NCAC 03M .0522 SPOTTED SEATROUT**

4 The Fisheries Director may, by proclamation, impose any of the following requirements on the taking of spotted
5 seatrout:

6 (1) specify time;

7 (2) specify area;

8 (3) specify means and methods;

9 (4) specify season;

10 (5) specify size; and

11 (6) specify quantity.

12
13 *History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;*

14 *Eff. May 1, 2017.*

1 15A NCAC 03O .0114 is amended with changes as published in 31:07 NCR 589-590 as follows:

2
3 **15A NCAC 03O .0114 SUSPENSION, ~~REVOCATION~~ REVOCATION, AND REISSUANCE OF**
4 **LICENSES**

5 (a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113
6 are shall be subject to suspension and revocation.

7 (b) A conviction resulting from being charged by an inspector under G.S. 14-32, ~~14-33~~ 14-33, 14-72, or 14-399 shall
8 be deemed a conviction for the purposes of license suspension or revocation purposes ~~revocation~~.

9 (c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in
10 Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, ~~a second, a third~~ third, ~~or a fourth~~
11 fourth, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the
12 convictions shall be treated as a single conviction so far as for the purposes of license suspension or revocation of the
13 licenses of a licensee is concerned ~~revocation~~. For a second conviction, the Fisheries Director shall suspend all
14 licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all
15 licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director
16 shall revoke all licenses issued to the licensee, except:

- 17 (1) ~~For for~~ a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses
18 issued to the licensee for a period of one year;
- 19 (2) ~~For for~~ a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses
20 issued to the licensee for a period of one year; for a second or subsequent conviction under G.S.
21 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
- 22 (3) ~~For for~~ a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries
23 Director shall revoke all licenses issued to the licensee; and
- 24 (4) ~~For for~~ a conviction under G.S. 14-32 or 14-33, when if the offense was committed against a marine
25 fisheries ~~inspector~~ inspector, the Fisheries Director shall revoke all licenses issued to the licensee;
26 licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license
27 or for any additional license authorized in Article 14A, Article 14B and 14B, or Article 25A of
28 Chapter 113 for a period of two years.

29 (d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a
30 licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation.
31 ~~The If the licensee is not an individual, the~~ written notice may shall be served upon any responsible individual affiliated
32 with the corporation, partnership, or association where the licensee is not an individual ~~association~~. The notice of
33 suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, must
34 shall state the ground upon which it is based, and takes shall take effect immediately upon service. The agent of the
35 Fisheries Director making service shall then or subsequently, as may be feasible under the circumstances, collect all
36 license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director.

1 (e) ~~Where~~ If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license
2 or for any additional license authorized in Article 14A, Article ~~14B and 14B,~~ or Article 25A of Chapter 113 during
3 the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at
4 the end of a period of suspension.

5 (f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked
6 license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a
7 period of one year, except as provided in ~~Paragraph~~ Subparagraph (c)(4) of this Rule. For a request for reinstatement
8 following revocation, the ~~eligible~~ former licensee shall ~~satisfy the Fisheries Director demonstrate in the request~~ that
9 the licensee will ~~strive in the future to~~ conduct the operations for which the license is sought in accord with all
10 applicable laws and ~~rules by sending a request for reinstatement rules, shall submit the request in writing writing, and~~
11 ~~shall send the request~~ to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769,
12 Morehead City, North Carolina NC 28557. Upon the application of an eligible former licensee after revocation, the
13 Fisheries Director may issue one license sought but not another, as ~~deemed~~ necessary to prevent the hazard of recurring
14 violations of the law.

15 (g) A licensee shall not willfully evade the service prescribed in this Rule.

16
17 *History Note: Authority G.S. 113-168.1; 113-171; S.L. 2010-145;*

18 *Eff. October 1, 2012;*

19 *Amended Eff. May 1, 2017.*

1 15A NCAC 03O .0201 is amended with changes as published in 31:07 NCR 590-591 as follows:

2
3 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES**
4 **AND FRANCHISES AND WATER COLUMN LEASES**

5 (a) All areas of the public ~~bottoms~~ bottom underlying ~~coastal fishing waters~~ Coastal Fishing Waters shall meet the
6 following ~~standards~~ standards and requirements, in addition to the standards in G.S. ~~113-202~~ 113-202, in order to be
7 deemed suitable for leasing for shellfish cultivation purposes:

- 8 (1) ~~The the proposed lease area must shall~~ not contain a ~~natural shellfish bed which is defined as "natural~~
9 ~~shellfish [bed",]bed,"~~ as defined in G.S. ~~[113-201.1]113-201.1~~, or have 10 bushels or more of
10 shellfish per ~~acre~~ acre;
- 11 (2) ~~The the proposed lease area must shall~~ not be closer than 100 feet to a developed shoreline, except
12 no minimum setback is required when the area to be leased borders the applicant's ~~property or~~
13 ~~property~~, the property of ~~riparian owners~~ "riparian [owners",]owners" as defined in G.S. 113-201.1
14 who have consented in a notarized ~~statement~~ statement, or is in an area bordered by undeveloped
15 ~~shoreline, no minimum setback is required~~ shoreline; and
- 16 (3) ~~The the proposed lease area shall not be less than one-half acre and shall not exceed five~~ 10
17 ~~acres~~ acres for all areas except those areas open to the mechanical harvest of oysters where proposed
18 ~~lease area shall not exceed 10 acres~~ areas;

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

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

22 ~~(b) To be [deemed] suitable for leasing for aquaculture purposes, water columns superjacent to leased bottom shall~~
23 ~~meet the standards in G.S. 113-202.1 and water columns superjacent to franchises recognized pursuant to G.S. 113-~~
24 ~~206 shall meet the standards in G.S. 113-202.2.~~

25 ~~(c) Franchises [To avoid termination, franchises]~~ recognized pursuant to G.S. 113-206 and shellfish bottom leases
26 shall ~~be terminated unless they~~ meet the following ~~standards in addition to the standards in G.S. 113-202. In order to~~
27 ~~avoid termination, franchises and shellfish bottom leases shall~~ requirements, in addition to the standards in and as
28 allowed by G.S. 113-202:

- 29 (1) ~~Produce they~~ produce and market 10 bushels of shellfish per acre per year; and
- 30 (2) ~~Plant [plant] they are planted with~~ 25 bushels of seed shellfish per acre per year or 50 bushels of
31 cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of
32 required cultch planted and the percentage of required seed shellfish planted totals at least 100
33 percent.

34 ~~(d) [To avoid termination, water]~~ Water column leases ~~[shall]~~ be terminated unless they meet the following
35 requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- 36 (1) they produce and market 40 bushels of shellfish per acre per year; or

- (2) [plant] the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.
- ~~(d)~~(e) The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of Paragraph ~~(e)~~ Paragraphs (c) and (d) of this Rule:
- (1) Only shellfish marketed, planted, or produced or marketed according to the definitions as defined in 15A NCAC 03I .0101 as the fishing activities "shellfish marketing from leases and [franchises]; [franchises," "shellfish planting effort on leases and [franchises]," [franchises," or "shellfish production on leases and franchises" shall be submitted on production/utilization [reporting] forms [as set forth in Rule .0207 of this Section] for shellfish leases and franchises included in the lease and franchise reports required by Rule .0207 of this Section.
 - (2) If more than one ~~shellfish~~ lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish ~~must shall~~ be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may shall be produced by only one ~~shellfish~~ lease or franchise. Shellfish transplanted between leases or franchises may shall be credited as planting effort on only one lease or franchise.
 - (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the ~~standards [requirements] requirements of this Rule.~~ The lease or franchise ~~must shall~~ meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and 202.2 to be ~~judged deemed~~ in compliance ~~with these standards for shellfish bottom leases.~~ The lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and 202.2 to be deemed in compliance for water column leases.
 - (4) All bushel measurements shall be in standard U.S. bushels.
 - ~~(4)~~(5) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam ~~shell and shell, or~~ 90 pounds of fossil stone equal one bushel.
 - ~~(5)~~ In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.
 - (6) Production and marketing rate averages shall be computed irrespective of transfer of the lease or franchise. The production and marketing rates shall be averaged: averaged for the following situations using the time periods described:

- (A) for an initial bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom leases and franchises; lease or franchise;
- (B) for a renewal bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease contract for renewal leases or franchise contract;
- (C) for a water column lease, over the first five-year five-year period for an initial water column leases-lease and over the most recent five-year five-year period thereafter for a renewal water column leases-lease; or
- (D) for a bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.

~~Production and marketing rate averages shall be computed irrespective of transfer of the shellfish lease or franchise.~~

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

~~(7) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.~~

~~(f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries. prior to the Division of Marine Fisheries accepting applications for additional shellfish lease acreage.~~

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

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

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

*History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*

- 1 *Temporary Amendment Eff. October 1, 2001;*
- 2 *Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003.*

1 15A NCAC 03O .0208 is amended with changes as published in 31:07 NCR 591-592 as follows:

2
3 **15A NCAC 03O .0208 CANCELLATION~~TERMINATION~~ OF SHELLFISH BOTTOM LEASES AND**
4 **FRANCHISES AND WATER COLUMN LEASES**

5 (a) Procedures for termination of shellfish leaseholds are provided in G.S. 113-202. An appeal of the Secretary's
6 decision to terminate a leasehold is governed by G.S. 150B-23. The Secretary's decision to terminate a leasehold may
7 be appealed by initiating a contested case as outlined in G.S. 150B-23.]

8 (a)(b) In addition to Consistent with ~~the grounds~~ [for termination] established by G.S. 113-202, the Secretary shall
9 begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a
10 planting effort of cultch or seed shellfish in accordance with 15A NCAC 03O .0201 [substantial] Substantial breach
11 of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes
12 the following, except as provided in Paragraph (c) of this Rule:

- 13 (1) failure to meet shellfish production and marketing requirements for bottom leases or franchises in
14 accordance with Rule .0201 of this Section;
- 15 (2) failure to maintain a planting effort of cultch or seed shellfish for bottom leases or franchises in
16 accordance with Rule .0201 of this Section;
- 17 (3) failure either to meet shellfish production and marketing requirements or to maintain a planting
18 effort of cultch or seed shellfish for water column leases in accordance with Rule .0201 of this
19 Section;
- 20 (4) the Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights
21 has encroached or usurped the legal rights of the public to access public trust resources in navigable
22 waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; or and
- 23 (5) the Attorney General initiates action for the purpose of vacating or annulling letters patent granted
24 by the State, in accordance with G.S. 146-63.

25 ~~(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those~~
26 ~~claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent~~
27 ~~were granted, or have by any other means forfeited the interest acquired under the same. The Division shall investigate~~
28 ~~all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate~~
29 ~~an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.~~

30 ~~(c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the~~
31 ~~holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources~~
32 ~~in navigable waters.~~

33 (c) Consistent with G.S. 113-202(11) and 113-201(b), a leaseholder that failed to meet requirements in G.S. 113-202,
34 15A NCAC 03O .0201 or this Rule may be granted a single extension period of no more than two years per contract
35 period upon sufficient a showing of hardship by written notice to the Fisheries Director prior to the expiration of the
36 lease term that one of the following occurrences caused or will cause the leaseholder to fail to meet lease requirements:

- 1 (1) death, illness, or incapacity of the leaseholder or his ~~["immediate family",~~ immediate family as
2 defined in G.S. 113-168 that prevented or will prevent the leaseholder from working the lease;
3 (2) damage to the lease from hurricanes, tropical storms, or other severe weather events recognized by
4 the National Weather Service;
5 (3) shellfish mortality caused by disease, natural predators, or parasites; or
6 (4) damage to the lease from a manmade disaster that triggers a state emergency declaration or federal
7 emergency declaration.

8 (d) In the case of hardship as described in Subparagraph (c)(1) of this Rule, the notice shall state the name of the
9 leaseholder or immediate family ~~member,~~ member and either the date of ~~death,~~ death or the date and nature of the
10 illness or incapacity. ~~[The Fisheries Director may require a doctor's verification of the illness or incapacity.]~~ Written
11 notice and ~~[any]~~ supporting documentation shall be addressed to the Director of the Division of Marine Fisheries,
12 3441 Arendell St., P.O. Box 769, Morehead City, NC 28557.

13 ~~[(e) Requirements for transfer of beneficial ownership of all or any portion of or interest in a leasehold are provided~~
14 ~~in G.S. 113-202(k).]~~

15 ~~(d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period~~
16 ~~of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office~~
17 ~~of Administrative Hearings as outlined in 15A NCAC 03P .0102.~~

18 ~~(e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A~~
19 ~~NCAC 03P .0102.~~

21 History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52;

22 Eff. January 1, 1991;

23 Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;

24 Temporary Amendment Eff. January 1, 2002; October 1, 2001;

25 Amended Eff. May 1, 2017; April 1, 2003.

1 15A NCAC 03O .0501 is amended with changes as published in 31:07 NCR 592-594 as follows:

2
3 **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

4 (a) To obtain any Marine Fisheries permit, the following information is required for proper application from the
5 applicant, a responsible party, or person holding a power of attorney; an applicant, responsible party, or person holding
6 a power of attorney shall provide the following information:

- 7 (1) ~~Full~~ the full name, physical address, mailing address, date of birth, and signature of the applicant on
8 the ~~application~~. ~~If application~~ [and] and, if the applicant is not appearing before a license agent or
9 the designated Division contact, the applicant's signature on the application shall be notarized;
- 10 (2) ~~Current~~ a current picture identification of applicant, responsible party, or person holding a power of
11 attorney. Acceptable forms of picture identification are driver's license, North Carolina
12 Identification card issued by the North Carolina Division of Motor Vehicles, military identification
13 card, resident alien card (green card), or ~~passport~~; passport, or if applying by mail, a copy thereof;
- 14 (3) ~~Full~~ for permits that require a list of designees, the full names and dates of birth of designees of the
15 applicant who will be acting under the requested ~~permit where that type permit requires listing of~~
16 designees; permit;
- 17 (4) ~~Certification~~ certification that the applicant and his designees do not have four or more marine or
18 estuarine resource convictions during the previous three years;
- 19 (5) ~~For~~ for permit applications from business entities:
- 20 (A) ~~Business Name;~~ the business name;
- 21 (B) ~~Type of Business Entity: Corporation,~~ the type of business entity: corporation,
22 "educational institution" as defined in 15A NCAC 03I .0101, limited liability company
23 (LLC), partnership, or sole proprietorship;
- 24 (C) ~~Name,~~ the name, address, and phone number of responsible party and other identifying
25 information required by this Subchapter or rules related to a specific permit;
- 26 (D) ~~For~~ for a ~~corporation,~~ corporation applying for a permit in a corporate name, the current
27 articles of incorporation and a current list of corporate ~~officers when applying for a permit~~
28 in a corporate name; officers;
- 29 (E) ~~For~~ for a ~~partnership,~~ if the partnership that is established by a written partnership
30 agreement, a current copy of such agreement shall be provided when applying for a permit;
31 and
- 32 (F) ~~For~~ for business ~~entities,~~ entities other than corporations, copies of current assumed name
33 statements if filed with the Register of Deeds office for the corresponding county and
34 copies of current business privilege tax certificates, if applicable; and
- 35 (6) ~~Additional~~ additional information as required for specific permits.

36 (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- 37 (1) Pound Net Permit;

- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; ~~or~~
- (3) Atlantic Ocean Striped Bass Commercial Gear ~~Permit~~; Permit; or
- (4) Permit for Weekend Trawling for Live Shrimp.
- (A) An individual who is assigned a Standard Commercial Fishing License is the individual required to hold a Permit for Weekend Trawling for Live Shrimp.
- (B) The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.
- (c) ~~A~~ When If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement ~~or a Shellfish License in order for a permittee to hold a:~~
- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or ~~Franchises~~; Franchises, except as provided in G.S. 113-169.2;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (5) Depuration Permit.
- (d) When If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:
- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (4) Depuration Permit.
- ~~(d)~~ (e) A permittee shall hold a valid:
- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement Endorsement, or a Shellfish License in order to harvest clams or oysters for depuration.
- ~~(e)~~ (f) Aquaculture Operations/Collection Permits:
- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- ~~(f)~~ (g) Atlantic Ocean Striped Bass Commercial Gear Permit:

(1) ~~Upon application~~ An applicant for an Atlantic Ocean Striped Bass Commercial Gear ~~Permit, a person Permit~~ shall declare one of the following ~~gears-types of gear~~ for an initial permit and at intervals of three consecutive license years thereafter:

(A) a gill net;

(B) a trawl net; ~~trawl~~; or

(C) a beach seine.

For the purpose of this Rule, a “beach seine” is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

(2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing ~~Licenses-Licenses~~, or assignments held by the person.

~~(e)(h)~~ 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 ~~the~~ deficiency in the application ~~so~~ noted.

~~(h)(i)~~ A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, 03O .0502, and ~~.0503-.0503~~, as applicable to the requested permit.

~~(i)(j)~~ ~~The Fisheries Director, or his agent may evaluate the following in~~ In determining whether to issue, modify, or renew a ~~permit~~ permit, the Fisheries Director or his agent shall evaluate factors such as the following:

(1) ~~Potential-potential~~ threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;

(2) ~~Applicant's-the~~ applicant's demonstration of a valid justification for the permit and a showing of ~~responsibility as determined by the Fisheries Director; responsibility;~~ and

(3) ~~Applicant's-the~~ applicant's history of ~~habitual~~ fisheries violations evidenced by eight or more violations in 10 years.

~~(j)(k)~~ The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further ~~information, information~~ or reasons why the permit should not be denied or modified.

~~(k)(l)~~ Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

~~(l)(m)~~ For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. ~~Notarization of signature~~ Notarized signatures on renewal applications shall not be required.

1 ~~(m)~~(n) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified
2 in this Chapter.

3 (n)(e) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change
4 of name or address, in accordance with G.S. 113-169.2.

5 (o)(e) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee
6 prior to use of the permit by that designee.

7 (p)(e) Permit applications are available at all Division Offices.

8
9 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*
10 *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*
11 *Eff. April 1, 2001;*
12 *Temporary Amendment Eff. October 1, 2001;*
13 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,*
14 *2007; September 1, 2005; April 1, 2003; August 1, 2002.*

1 15A NCAC 03O .0503 is amended with changes as published in 31:07 NCR 594-597 as follows:

3 **15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

4 (a) Horseshoe Crab Biomedical Use Permit:

5 (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.

6 (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to
7 submit a-an annual report on the use of horseshoe crabs to the Division of Marine Fisheries due on
8 February 1 of each year. Such reports shall be filed on forms provided by the Division and shall
9 include a monthly account of the number of crabs harvested, statement of percent mortality up to
10 the point of release, harvest method, number or percent of males and females, and disposition of
11 bled crabs prior to release, and a certification that harvested horseshoe crabs are solely used by the
12 biomedical facility and not for other purposes.

13 (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to
14 comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan
15 for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery
16 Management Plan for Horseshoe Crab is incorporated by reference including subsequent
17 amendments and editions. Copies of this plan are available via the Internet from the Atlantic States
18 Marine Fisheries Commission at <http://www.asafc.org/fisheries-management/program-overview>
19 and at the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., 3441 Arendell Street, P.O.
20 Box 769, Morehead City, North Carolina NC 28557 at no cost.

21 (b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

22 (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers
23 Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish
24 dealers issued such permit to fail to:

25 (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the
26 previous day's landings for the permitted fishery to the dealer contact designated on the
27 permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If
28 the dealer is unable to fax or electronic mail the required information, the permittee shall
29 call in the previous day's landings to the dealer contact designated on the permit, but shall
30 maintain a log furnished by the Division; permit.

31 (B) submit the required log form set forth in Subitem (b)(1)(A) of this Rule to the Division
32 upon request or no later than five days after the close of the season for the fishery permitted;

33 (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;

34 (D) contact the dealer contact designated on the permit daily regardless of whether or not a
35 transaction for the fishery for which a dealer is permitted occurred; and

36 (E) record the permanent dealer identification number on the bill of lading or receipt for each
37 transaction or shipment from the permitted fishery.

- 1 (2) Striped Bass Dealer Permit:
- 2 (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from
- 3 the following areas without first obtaining a Striped Bass Dealer Permit validated for the
- 4 applicable harvest area:
- 5 (i) Atlantic Ocean;
- 6 (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
- 7 (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area
- 8 as designated in 15A NCAC 03R .0201.
- 9 (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest
- 10 areas opened by proclamation without having a North Carolina Division of Marine
- 11 Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover,
- 12 or, in the case of striped bass imported from other states, a similar tag that is issued for
- 13 striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass
- 14 tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the
- 15 North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries
- 16 shall specify the quantity of tags to be issued based on historical striped bass landings. It
- 17 is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- 18 (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess,
- 19 buy, sell, or offer for sale river herring taken from the ~~following area~~ Albemarle Sound Management
- 20 Area for River Herring as defined in 15A NCAC 03R .0202 without first obtaining an Albemarle
- 21 Sound Management Area for River Herring Dealer ~~Permit: Albemarle Sound Management Area~~
- 22 ~~for River Herring as defined in 15A NCAC 03R .0202.~~ Permit.
- 23 (4) Atlantic Ocean Flounder Dealer Permit:
- 24 (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder
- 25 from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction
- 26 at their licensed location during the open season without first obtaining an Atlantic Ocean
- 27 Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean
- 28 Flounder Dealer Permit and only one location per permit shall be allowed.
- 29 (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds
- 30 of flounder from a single transaction from the Atlantic Ocean without first obtaining an
- 31 Atlantic Ocean Flounder Dealer Permit.
- 32 (5) Black Sea Bass North of Cape Hatteras Dealer ~~Permit~~ Permit: It is unlawful for a fish dealer to
- 33 purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of
- 34 Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season
- 35 unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.

- (6) Spiny Dogfish Dealer Permit: It is unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation as set forth in 15A NCAC 03I.0107 from April 1 through November 30.
 - (2) It is unlawful to tow a shrimp trawl net for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in the area described in Subparagraph (d)(1) of this Rule when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National ~~Marine Fisheries Service~~ Oceanic and Atmospheric Administration Fisheries.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 ~~CFR~~ Code of Federal Regulations (CFR) 223.206. This federal rule is incorporated by reference including subsequent amendments and editions. Copies of this rule are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost. 50 CFR 223.206 [(2002)] is hereby incorporated by [reference,] reference, including subsequent amendments and editions. A copy of the reference materials can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=9088932317c242b91d6a87a47b6bda54&mc=true&tpl=/ecfrbrowse/Title50/50tab_02.tpl, free of charge. [~~A copy of the CFR in effect on the date of this Rule can be found at <http://portal.nceenr.org/web/mf/rules-and-regulations>, free of charge.~~]
- (e) ~~Pound Net Set Permits~~ Permit: Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.
- (f) ~~Aquaculture Operations/Collection Permits~~ Operation Permit and Aquaculture Collection Permit:
- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
 - (2) It is unlawful:

- 1 (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture
2 purposes without first obtaining an Aquaculture Collection Permit from the Fisheries
3 ~~Director.~~Director;
- 4 (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and
5 estuarine resources taken under an Aquaculture Collection ~~Permit.~~Permit; and
- 6 (C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year
7 on the form provided by the Division the amount and disposition of marine and estuarine
8 resources collected under authority of ~~this permit.~~an Aquaculture Collection Permit.
- 9 (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are
10 exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection
11 Permit issued by the Fisheries Director.
- 12 (4) Aquaculture ~~Operations/Collection~~ Operation Permits and Aquaculture Collection Permits shall be
13 issued or renewed on a calendar year basis.
- 14 (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting
15 under an Aquaculture Collection Permit at the time of application.
- 16 (g) Scientific or Educational Activity Permit:
- 17 (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or
18 statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any
19 marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- 20 (2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational
21 purposes and for collection methods and possession allowances approved by the Division of Marine
22 Fisheries.
- 23 (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted
24 by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I
25 .0101.
- 26 (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to
27 submit a-an annual report on collections and, if authorized, sales to the Division of Marine Fisheries
28 due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed
29 on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a
30 calendar year basis.
- 31 (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity
32 Permit without:
- 33 (A) the required license(s)-license for such sale;
- 34 (B) an authorization stated on the permit for such sale; and
- 35 (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed
36 fish dealer.

- 1 (6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting
2 under a Scientific or Educational Activity Permit at the time of application.
- 3 (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries
4 Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of
5 the permit, specifying activities and location.
- 6 (h) Under Dock Oyster Culture Permit:
- 7 (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first
8 obtaining an Under Dock Oyster Culture Permit.
- 9 (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth
10 in G.S. 113-210(c).
- 11 (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct
12 answers, based on an educational package provided by the Division of Marine Fisheries pursuant to
13 G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
- 14 (A) the application process;
- 15 (B) permit criteria;
- 16 (C) basic oyster biology and culture techniques;
- 17 (D) shellfish harvest area closures due to pollution;
- 18 (E) safe handling practices;
- 19 (F) permit conditions; and
- 20 (G) permit revocation criteria.
- 21 (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of
22 the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.
- 23 (i) Atlantic Ocean Striped Bass Commercial Gear Permit:
- 24 (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without
25 first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
- 26 (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain
27 more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- 28 (j) Coastal Recreational Fishing License Exemption Permit:
- 29 (1) It is unlawful for the responsible party seeking exemption from recreational fishing license
30 requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal
31 Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- 32 (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational
33 fishing activity conducted solely for the participation and benefit of one of the following groups of
34 eligible individuals:
- 35 (A) individuals with physical or mental limitations;
- 36 (B) members of the United States Armed Forces and their dependents, upon presentation of a
37 valid military identification ~~card, for military appreciation, card:~~

(C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and

(D) disadvantaged ~~youths~~ youths as set forth in U.S. Code 42 § 12511.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.

(3) The Coastal Recreational Fishing License Exemption Permit is valid for the ~~date(s), date,~~ time, and physical location of the organized fishing event for which the exemption is granted and the ~~time period-duration of the permit~~ shall not exceed one year from the date of issuance.

(4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries ~~Director in writing a minimum of~~ Director, in writing, at least 30 days prior to the event:

(A) the name, ~~date(s), date,~~ time, and physical location of the event;

(B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;

(C) the cost or requirements, if any, for an individual to participate in the event; and

(D) an estimate of the number of participants.

(k) Permit for Weekend Trawling for Live Shrimp:

(1) It is unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12:00 p.m. (noon) on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.

(2) It is unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.

(3) It is unlawful for a permit holder during the timeframe specified in Subparagraph (k)(1) of this Rule to:

(A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;

(B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;

(C) possess more than one gallon of dead shrimp (heads on) per trip;

(D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks with aerator(s) and/or circulating water, with a minimum combined tank capacity of 50 gallons; and

(E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52;

Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;

1 *Eff. April 1, 2001;*
2 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1,*
3 *2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002.*

1 15A NCAC 03P .0101 is amended with changes as published in 31:07 NCR 597-598 as follows:

2
3 **15A NCAC 03P .0101 ~~LICENSE/PERMIT~~ LICENSE, PERMIT, OR CERTIFICATE DENIAL:**
4 **INFORMAL HEARING PROCEDURES REQUEST FOR REVIEW**

5 ~~(a) If the Division decides to deny or limit a renewal of a license or permit for an activity of a continuing nature, the~~
6 ~~license sought to be renewed shall continue in effect as provided in G.S. 150B-3.~~

7 ~~(a) For the purpose of this Rule and in accordance with G.S. 150B-2, "license" includes "permit" as well as~~
8 ~~"certification" and "certificate of compliance." compliance."~~

9 ~~(b) Except in cases where G.S. 113-171 is applicable, before the Division may commence proceedings for suspension,~~
10 ~~revocation, annulment, withdrawal, recall, cancellation, or amendment of a ~~license or permit~~, license, notice shall be~~
11 ~~given to the license or permit holder notifying him that:~~

12 ~~(1) the license holder has a ~~right~~ right, through filing a request for a contested case hearing in the~~
13 ~~Office of Administrative ~~Hearings~~ Hearings, to a hearing before an administrative law judge and~~
14 ~~a final agency decision by the Marine Fisheries Commission; and~~

15 ~~(1)(2) He the license holder may request an opportunity to show compliance with all lawful requirements~~
16 ~~for retention of the license ~~in an informal meeting with Division personnel responsible for the~~~~
17 ~~initiation of the action to revoke the license; and by submitting a statement in writing to the personnel~~
18 ~~designated in the notice ~~for the initiation of the action.~~ to commence proceedings.~~

19 ~~(2) He has a right through filing a request for a contested case hearing in the Office of Administrative~~
20 ~~Hearings to a hearing before an administrative law judge and a final agency decision by the Marine~~
21 ~~Fisheries Commission.~~

22 ~~(c) Any ~~requests~~ statements submitted by the license holder ~~for an informal meeting or administrative hearings shall~~~~
23 ~~be made to the person designated in the notice to show compliance with all lawful requirements for retention of the~~
24 ~~license shall be postmarked within 15 days of receipt of the notice ~~for the initiation of the action.~~ to commence~~
25 ~~proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the~~

26 ~~notice and mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.~~

27 ~~(d) Upon receipt of a statement and any supporting documentation from the license holder, the Division shall review~~
28 ~~the statement ~~and~~ and, within 15 days, shall notify the license holder in writing with the Division's determination~~
29 ~~~~of~~ whether the license holder demonstrated compliance with all lawful requirements for retention of the license. In~~
30 ~~making this determination, the Division may consider criteria ~~including, but not limited to~~ including material~~
31 ~~changes made enabling the license holder to conduct the operations for which the license is held in accord with all~~
32 ~~applicable laws and ~~rules,~~ rules and processing errors made by the Division.~~

33 ~~(d)(e) The Division ~~may~~ shall order summary suspension of a license or permit if it finds that the public health, safety,~~
34 ~~or welfare requires emergency action. Upon such ~~determination~~ determination, the Fisheries Director shall issue an~~
35 ~~order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the~~
36 ~~order or the date of service of a certified copy of the order at the last known address of the license or permit holder~~
37 ~~holder, whichever is later.~~

1 ~~(e) When a license is summarily suspended and a request is made for an informal meeting or a hearing, the proceeding~~
2 ~~shall be promptly commenced and determined.~~

3
4 *History Note:* Authority G.S. 113-134; 113-171; 113-221.2; 150B-3; 150B-23;
5 *Eff. January 1, 1991;*
6 *Amended Eff. May 1, 2017; August 1, 1999.*