

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0114

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022.**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

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

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

*In (b), lines 6-7, where is your statutory authority to suspend or revoke licenses for violations of Chapter 14? G.S. 113-171 defines convictions as being for “criminal offense[s] within the jurisdiction of the Department under the provisions of this Subchapter (Subchapter IV of Chapter 113)....”*

*In (f), p.2, line 6, how is the licensee to demonstrate that he or she will “conduct the operations for which the license is sought in accordance with all applicable laws and rules”?*

*In (g), line 12, where is your statutory authority for this? What are the penalties associated with violation of (g)?*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: 4/4/22

1 15A NCAC 03O .0114 is readopted as published in 36:07 NCR 488-489 as follows:

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

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

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

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

15 (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued  
16 to the licensee for a period of one year;

17 (2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses  
18 issued to the licensee for a period of one year; for a second or subsequent conviction under G.S.  
19 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;

20 (3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director  
21 shall revoke all licenses issued to the licensee; and

22 (4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries  
23 inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former  
24 licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional  
25 license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two  
26 years.

27 (d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a  
28 licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation.  
29 If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with  
30 the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or  
31 other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect  
32 immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and  
33 plates and other forms or records relating to the license as directed by the Fisheries Director. Upon service of a notice  
34 of suspension or revocation of a license, it shall be unlawful to fail to surrender any license so suspended or revoked.

35 (e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for  
36 any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension

1 period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a  
2 period of suspension.

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

12 (g) ~~A licensee shall not willfully~~ It shall be unlawful to evade the service prescribed in this Rule.

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14 *History Note: Authority G.S. 113-134; 113-168.1; 113-171; 113-182; 143B-289.52; S.L. 2010-145;*  
15 *Eff. October 1, 2012;*  
16 *Amended Eff. May 1, 2017;*  
17 *Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).*

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AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0209

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

*In (b), lines 16-18, where is your statutory authority for the requirements that the Division provide written consent to a transfer before it becomes effective and that the transfer be made only by the use of a form provided and approved by the Division? G.S. 113-202(k) states that leaseholds are treated as real property and are subject to laws relating to "sale... and the like." Moreover, 202(k) goes on to require only that transfer is not valid until the new owner notifies the Secretary.*

*With respect to the form referenced in (b), are the contents completely described in (c), or would the Division require any other information/documentation?*

*In (d), where is your statutory authority to limit the size of a transfer or sublease?*

*In (f), line 31, do you need to include a reference to 113-202.1(j), which also touches on transferability (or lack thereof) of certain water column leases?*

*In the History Note, why have you included the references to G.S. 113-205 and 113-206?*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: 4/4/22

1 15A NCAC 03O .0209 is readopted as published in 36:07 NCR 491-492 as follows:

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3 **15A NCAC 03O .0209 ~~TRANSFER OF INTEREST~~ ASSIGNMENT OF SHELLFISH LEASES AND**  
4 **FRANCHISES**

5 (a) For the purpose of effecting assignments of shellfish leases or franchises in accordance with this Rule:

6 (1) "transfer" shall be defined as any permanent assignment of a shellfish lease or franchise, in whole  
7 or in part.

8 (2) "sublease" shall be defined as any temporary assignment of a shellfish lease or franchise, in whole  
9 or in part.

10 ~~(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new~~  
11 ~~owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located.~~  
12 ~~Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A~~  
13 ~~NCAC 03O .0202(b).~~

14 (b) No transfer or sublease of a shellfish lease or franchise, in whole or in part, shall be valid until notice is provided  
15 to the Division of Marine Fisheries as provided in Article 16 of Chapter 113 of the North Carolina General Statutes  
16 and the Division provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of  
17 the North Carolina General Statutes and Marine Fisheries Commission Rules. A transfer may only be made by the use  
18 of a form provided and approved by the Division.

19 (c) Notice to transfer or sublease a shellfish lease or franchise shall include the shellfish lease or franchise number,  
20 county in which the lease or franchise is located, and the name of the transferee or sub-lessee. The transferee or sub-  
21 lessee of a shellfish lease shall provide to the Division the required Shellfish Lease Management Plan and proof of  
22 completion of training requirements in accordance with Rule .0202 of this Section.

23 ~~(b)(d) If the new owner obtains a~~ The smallest ~~portion of an existing shellfish bottom lease or franchise, it shall not~~  
24 ~~contain less than franchise to be transferred or subleased shall be one-half acre-acre, and the required notification to~~  
25 ~~the Division shall be accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).~~

26 ~~(e) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training~~  
27 ~~as specified in 15A NCAC 03O .0202(d).~~

28 (e) A shellfish lease or franchise shall not be transferred or subleased to a nonresident of North Carolina in accordance  
29 with G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, and G.S. 113-206.

30 ~~(d)(f) Water column leases are not transferrable except when the Secretary approves such transfer~~ A shellfish water  
31 column lease shall only be transferred in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).

32 ~~(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.~~

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34 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 113-206;*  
35 *143B-289.52;*

36 *Eff. January 1, 1991;*

37 *Amended Eff. April 1, 2011; March 1, 1994; September 1, 1991;*

