

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03M .0101 & 18A .0911

DEADLINE FOR RECEIPT: Tuesday, April 11, 2023

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:

Do either of these rules implicate the joint jurisdiction of Marine Fisheries and the Wildlife Resources Commission? If not, why not? If so, were they adopted concurrently with WRC?

Please retype the rule accordingly and resubmit it to our office electronically.

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

Line 8 could be clarified. Is “engaged in fishing” different from simply using “fishing”? Is “any” necessary? Would it not be clearer to begin the Rule: “It shall be unlawful to possess, aboard a vessel or while fishing, finfish species that are subject to...”?

Is “including” necessary on line 9 to modify “size limit”?

Both Subparagraphs listed above lack a clear method or procedure for “the determination of emissions” or “the determination of Btu input”. Is there a way to clarify this if this language is to be included?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: April 3, 2023

1 15A NCAC 03M .0101 is amended as published in 37:07 NCR 541 as follows:

2
3 **SUBCHAPTER 03M - FINFISH**

4
5 **SECTION .0100 – FINFISH, GENERAL**

6
7 **15A NCAC 03M .0101 MUTILATED FINFISH**

8 It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a
9 ~~size or harvest restriction~~ possession limit, including size limit, recreational bag limit, commercial trip limit, or season,
10 without having head and tail attached, ~~except~~ unless otherwise specified in a rule of the Marine Fisheries Commission
11 or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

12 (1) ~~mullet when used for bait;~~

13 (2) ~~hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing~~
14 ~~operation may be cut for bait at any one time; and~~

15 (3) ~~tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.~~

16
17 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*

18 *Eff. January 1, 1991;*

19 *Amended Eff. January 1, 1991;*

20 *Temporary Amendment Eff. May 1, 2001;*

21 *Amended Eff. May 1, 2015; April 1, 2011; July 1, 2006; August 1, 2002;*

22 *Readopted Eff. April 1, 2019;*

23 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0911

DEADLINE FOR RECEIPT: Tuesday, April 11, 2023

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:

Please use active verbs. "The Division of Marine Fisheries shall classify shellfish growing waters with respect to marinas, docking facilities, and other mooring areas as follows:"

Please change the period at the end of Item (1) to a semicolon.

What is the "dilution analysis" in Item (2)? What is the procedure or method by which this analysis is conducted? Will the prohibition extend to the "minimum extent"? This is unclear and ambiguous.

Item (3) should begin like Item (2), "the Division of Marine Fisheries shall". For clarity, it should continue: "shall determine the prohibited areas required in Items (1) and (2) by..." Instead of "in close proximity to", use "close to". Instead of "for the purposes of determining", use "to determine". Words like "necessary" and "each" should be removed or defined more clearly. A phrase like "marinas shall be considered to be in close proximity to" is excessive. Use "marinas considered close to". Also, "if the dilution analysis indicates..." is unclear. How would it indicate? How would this be calculated and, when calculated, what would be the numerical indication of "necessary dilution areas"? This needs to be clearly explained in rule to be used.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: April 3, 2023

1 15A NCAC 18A .0911 is readopted as published in 37:07 NCR 541-542 as follows:

2
3 **15A NCAC 18A .0911 ~~MARINAS: MARINAS, DOCKING FACILITIES: FACILITIES, AND OTHER~~**
4 **~~MOORING AREAS~~**

5 ~~Classification of shellfish~~ Shellfish growing waters with respect to marinas, docking facilities, and other mooring
6 areas shall be ~~done~~ classified in accordance with the following:

7 (1) ~~All~~ all waters within ~~the immediate vicinity of~~ a marina shall be classified as prohibited to the
8 harvesting of shellfish for human consumption.

9 ~~Excluded from this classification are marinas with less than 30 slips, having no boats over 24 feet~~
10 ~~in length, no boats with heads and no boats with cabins. Marinas permitted prior to the effective~~
11 ~~date of this Rule may continue to have boats up to 21 feet in length with cabins and not be subject~~
12 ~~to the mandatory water classification of prohibited in the immediate vicinity of the marina.~~

13 (2) ~~Owners of marinas conforming to the exclusion provisions in Item (1) of this Rule shall make~~
14 ~~quarterly reports to the Division. These reports shall include the following information:~~

- 15 (a) ~~number of slips;~~
- 16 (b) ~~number and length of boats;~~
- 17 (c) ~~number and length of boats with cabins;~~
- 18 (d) ~~number of boats with heads; and~~
- 19 (e) ~~number of boats with "porta potties."~~

20 ~~Reports to the Division shall cover the occupancy of the marina on the fifth day of the first month of each quarter of~~
21 ~~the calendar year and shall be post marked on or before the fifteenth day of the reporting month.~~

22 (3) ~~The minimum requirement for the prohibited area beyond the marina shall be based on the number~~
23 ~~of slips and the type of marina (open or closed system). The prohibited area shall extend beyond~~
24 ~~the marina from all boat slips, docks, and docking facilities, according to the following:~~

25 26 Number of Slips in Marina	27 Size of Prohibited Area (Feet)	
	Open System	Closed System
28 29 11—25	100	200
30 26—50	150	275
31 51—75	175	325
32 76—100	200	400

33
34 ~~Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over~~
35 ~~100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private~~
36 ~~or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above,~~
37 ~~or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50~~

1 ~~slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal,~~
2 ~~whichever is greater.~~

3 (2) the Division of Marine Fisheries shall conduct a dilution analysis to determine the minimum extent
4 of the area adjacent to a marina that shall be classified as prohibited to the harvesting of shellfish
5 for human consumption. The prohibited area shall be sized to dilute the concentration of fecal
6 coliform bacteria to less than 14 MPN, as determined by the dilution analysis. The dilution analysis
7 shall be conducted yearly and shall incorporate the following:

8 (a) the findings of the shoreline survey, including the presence of a sewage pumpout system
9 or dump station; and

10 (b) the physical factors influencing the dilution and dispersion of human wastes; and

11 ~~(4)(3) After a marina is put in use water quality impacts of marina facilities may require a change in~~
12 ~~classification. In determining if a change in classification is necessary, marina design, marina usage,~~
13 ~~dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors will be~~
14 ~~considered. slip counts and services for marinas, docking facilities, and mooring areas in close~~
15 ~~proximity to one another shall be combined for the purposes of determining the necessary prohibited~~
16 ~~area as required in Items (1) and (2) of this Rule. Docking facilities and mooring areas each with~~
17 ~~three slips or more and marinas shall be considered to be in close proximity to one another if the~~
18 ~~dilution analysis indicates that the necessary dilution areas meet or overlap.~~

19 (5) ~~Areas, other than marinas, where boats are moored or docked may be considered on a case by case~~
20 ~~basis with respect to sanitary significance relative to actual or potential contamination and~~
21 ~~classification shall be made as necessary.~~

22 (6) ~~The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close~~
23 ~~proximity to each other are expected to adversely affect public trust waters. When these situations~~
24 ~~occur the Division will recommend closures exceeding those outlined in Item (3) of this Rule. The~~
25 ~~following guides will be used in determining close proximity:~~

26 (a) ~~marina entrance canals within 225 feet of each other;~~

27 (b) ~~open system marinas within 450 feet of each other (Mooring areas shall be considered open~~
28 ~~system marinas);~~

29 (c) ~~where closure areas meet or overlap; and~~

30 (d) ~~open system marinas within 300 feet of a marina entrance canal.~~

31
32 *History Note:* Authority G.S. 130A-230; 113-134; 113-182; 113-221.2; 143B-289.52;

33 Eff. June 1, 1989;

34 Amended Eff. July 1, 1993;

35 Readopted Eff. May 1, 2023.