

## Burgos, Alexander N

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**Subject:** FW: 1 MFC rule

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Wednesday, July 31, 2024 9:08 AM

**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: 1 MFC rule

No worries, just making sure. Thanks!

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: 1 MFC rule

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**From:** Everett, Jennifer <jennifer.everett@deq.nc.gov>

**Sent:** Tuesday, July 30, 2024 6:37 PM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: 1 MFC rule

Correct, apologies for advertently including it for the agenda. I has been sent for legislative review and is exempt from RRC review.

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8595  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Saturday, July 27, 2024 1:49 PM  
**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Thanks, Jennifer. Have a great weekend!

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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(984)236-1948  
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**From:** Everett, Jennifer <jennifer.everett@deq.nc.gov>  
**Sent:** Friday, July 26, 2024 2:11 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

All rules, attached.

Jennifer Everett  
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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Friday, July 26, 2024 1:08 PM  
**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** RYAN, CHRISTINE M <[Cryan@NCDOJ.GOV](mailto:Cryan@NCDOJ.GOV)>; Maier, Shawn <[shawn.maier@deq.nc.gov](mailto:shawn.maier@deq.nc.gov)>; Blum, Catherine <[catherine.blum@deq.nc.gov](mailto:catherine.blum@deq.nc.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Jennifer,

We don't strictly need them, but I think it's easier on everyone if we get one package of final rules from y'all, so we don't miss anything.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** Everett, Jennifer <[jennifer.everett@deq.nc.gov](mailto:jennifer.everett@deq.nc.gov)>

**Sent:** Friday, July 26, 2024 1:02 PM

**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>

**Cc:** RYAN, CHRISTINE M <[Cryan@NCDOJ.GOV](mailto:Cryan@NCDOJ.GOV)>; Maier, Shawn <[shawn.maier@deq.nc.gov](mailto:shawn.maier@deq.nc.gov)>; Blum, Catherine <[catherine.blum@deq.nc.gov](mailto:catherine.blum@deq.nc.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Brian,

To be clear, you also want the rules that did not have any technical requests, right?

Thanks.

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
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## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC  
**Attachments:** 15A NCAC 03I .0101\_Rev2.docx

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**From:** Everett, Jennifer <jennifer.everett@deq.nc.gov>  
**Sent:** Friday, July 26, 2024 12:18 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Brian,

Agency response is in blue after your follow-up. And the rule is attached.

Best,

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8595  
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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Thursday, July 25, 2024 4:40 PM  
**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Hi Jennifer,

I think we're almost there. I am OK with the other rules, and can recommend approval. Just have one last thing for Rule 03I .0101. See below:

03I.0101

*In (1)(e), lines 34-35, how is the "primary mission" of an organization determined?*

## Burgos, Alexander N

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Friday, July 26, 2024 12:20 PM

**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Great, thanks, Jennifer! With this change, I believe I can recommend approval of this rule at Wednesday's meeting.

If you'd be so kind, please wrap up all the final versions of the rules and send them to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov), and we'll get them filed and posted on the agenda.

Best,  
Brian

Brian Liebman  
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(984)236-1948  
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Session Law 2015-241, Section 14.10A.(c) defines "nongovernmental conservation organization" as an organization whose primary mission is the conservation of natural resources. Section 14.10A.(d) of the law requires the adoption of cross-referenced rules consistent with subsection (c). Notwithstanding G.S. 150B-19(4), the rule adopted pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section.

I understand where the language comes from, and I think it would be contrary to the session law to depart from the language used in the session law. That said, I don't think the session law prevents you from defining a term such as "primary mission" or otherwise making it clear in the Rule how it is determined that an organization's primary mission is the conservation of natural resources.

Section 14.10A.(d) of the law directs the agency to amend cross-referenced rules consistent with subsection (c) of that section of the law. In an effort to avoid ambiguity while remaining consistent with subsection (c), the agency recommends modifying the text in 03I .0101(1)(e) by making the following clarification: ". . . an organization whose ~~primary~~ mission is ~~includes~~ the conservation of natural resources, based upon consideration of the organization's stated purpose and activities." (page 1, lines 34-36)

OK, I see what you've done and I think the second part ("based upon...") is good, but the first part (striking "primary" and swapping "is" for "includes") is problematic. As I said earlier, I don't think you can or should change the language that the Session Law directed you to use. I think you can, however, expand on it and give it meaning. So, how about this:

"Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources. For the purpose of this Section [or Chapter, whatever you think is appropriate], an organization's primary mission is based upon the Commission's consideration of the organization's publicly stated purpose and activities."

The text has been updated, consistent with your recommendations. As a result of adding "Division of Marine Fisheries" to the text, what was previously the first occurrence of "Division of Marine Fisheries" has been shortened to "Division" on page 2, line 25. For clarity to regulated stakeholders, across its rules the agency consistently introduces the full name for the first usage, with the shortened version used thereafter. The definition of nongovernmental conservation organization relates to the Scientific and Educational Activity Permit issued in accordance with 15A NCAC 03O .0503, and the Division is the entity responsible for reviewing permit applications and issuing permits.

Thanks,  
Brian

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1 15A NCAC 03I .0101 is amended with changes as published in 38:03 NCR 107-113 as follows:

2  
3 **SUBCHAPTER 03I – GENERAL RULES**

4  
5 **SECTION .0100 – GENERAL RULES**

6  
7 **15A NCAC 03I .0101 DEFINITIONS**

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

9 (1) enforcement and management terms:

10 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial  
11 fishing operations.

12 (b) "Educational institution" means a college, university, or community college accredited by  
13 an accrediting agency recognized by the U.S. Department of Education; an Environmental  
14 Education Center certified by the N.C. Department of Environmental Quality Office of  
15 Environmental Education and Public Affairs; or a zoo or aquarium certified by the  
16 Association of Zoos and Aquariums.

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

19 (d) length of finfish:

20 (i) "Curved fork length" means a length determined by measuring along a line tracing  
21 the contour of the body from the tip of the upper jaw to the middle of the fork in  
22 the caudal (tail) fin.

23 (ii) "Fork length" means a length determined by measuring along a straight line the  
24 distance from the tip of the snout with the mouth closed to the middle of the fork  
25 in the caudal (tail) fin, except that fork length for billfish is measured from the tip  
26 of the lower jaw to the middle of the fork of the caudal (tail) fin.

27 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal  
28 insertion of the pectoral fin to the fork of the tail measured along the contour of  
29 the body in a line that runs along the top of the pectoral fin and the top of the  
30 caudal keel.

31 (iv) "Total length" means a length determined by measuring along a straight line the  
32 distance from the tip of the snout with the mouth closed to the tip of the  
33 compressed caudal (tail) fin.

34 (e) "Nongovernmental conservation organization" means an organization whose primary  
35 mission is the conservation of natural resources. For the purpose of this Chapter, a  
36 determination of the organization's primary mission is based upon the Division of Marine  
37 Fisheries' consideration of the organization's publicly stated purpose and activities.

- 1 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:
- 2 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous
- 3 or deleterious substances, or marine biotoxins that render the consumption of
- 4 shellfish from those growing waters ~~hazardous;~~hazardous. This includes
- 5 poisonous or deleterious substances as listed in the latest approved edition of the
- 6 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan
- 7 Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action
- 8 Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances
- 9 in Seafood, which is incorporated by reference, including subsequent amendments
- 10 and editions. A copy of the reference material can be found at
- 11 <https://www.fda.gov/food/federalstate-food-programs/national-shellfish->
- 12 sanitation-program-nssp, at no cost;
- 13 (ii) that have been determined through a sanitary survey as defined in 15A NCAC
- 14 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source
- 15 outfall ~~with public health significance;~~that may contaminate shellfish and cause a
- 16 food safety hazard as defined in 15A NCAC 18A .0301;
- 17 (iii) that have been determined through a sanitary survey as defined in 15A NCAC
- 18 18A .0901 to be in or adjacent to a marina;
- 19 (iv) that have been determined through a sanitary survey as defined in 15A NCAC
- 20 18A .0901 to be impacted by other potential sources of pollution that render the
- 21 consumption of shellfish from those growing waters ~~hazardous;~~hazardous, such
- 22 as a wastewater treatment facility that does not contaminate a shellfish area when
- 23 it is operating normally but will contaminate a shellfish area and shellfish in that
- 24 area when a malfunction occurs; or
- 25 (v) where the Division ~~of Marine Fisheries~~ is unable to complete the monitoring
- 26 necessary to determine the presence of contamination or potential pollution
- 27 sources.
- 28 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,
- 29 area, means, and methods where take or possession is for a recreational purpose.
- 30 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational
- 31 purpose.
- 32 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by
- 33 the Fisheries Director through proclamation authority.
- 34 (j) "Scientific institution" means one of the following entities:
- 35 (i) an educational institution as defined in this Item;
- 36 (ii) a state or federal agency charged with the management of marine or estuarine
- 37 resources; or

1 (iii) a professional organization or secondary school working under the direction of,  
2 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)  
3 of this Item.

4 (2) fishing activities:

5 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of  
6 marine or estuarine resources, or other non-native species that may thrive if introduced into  
7 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of  
8 rearing on private bottom (with or without the superadjacent water column) or in a  
9 controlled environment. A controlled environment provides and maintains throughout the  
10 rearing process one or more of the following:

- 11 (i) food;
- 12 (ii) predator protection;
- 13 (iii) salinity;
- 14 (iv) temperature controls; or
- 15 (v) water circulation, utilizing technology not found in the natural environment.

16 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available  
17 to work the gear and be within 100 yards of any gear in use by that person at all times.  
18 Attended does not include being in a building or structure.

19 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former  
20 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a  
21 controlled environment. A controlled environment provides and maintains throughout the  
22 shedding process one or more of the following:

- 23 (i) food;
- 24 (ii) predator protection;
- 25 (iii) salinity;
- 26 (iv) temperature controls; or
- 27 (v) water circulation, utilizing technology not found in the natural environment. A  
28 shedding operation does not include transporting pink or red-line peeler crabs to  
29 a permitted shedding operation.

30 (d) "Depuration" means mechanical purification or the removal of adulteration from live  
31 oysters, clams, or mussels by any artificially controlled means."Depurate" or "depuration"  
32 has the same meaning as defined in the 2019 revision of the NSSP Guide for the Control  
33 of Molluscan Shellfish, Section I: Purpose and Definitions. This definition is incorporated  
34 by reference, not including subsequent amendments and editions. A copy of the reference  
35 material can be found at [https://www.fda.gov/food/federalstate-food-programs/national-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)  
36 shellfish-sanitation-program-nssp, at no cost.

37 (e) "Long haul operation" means fishing a seine towed between two vessels.

- 1 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and  
 2 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 3 (g) "Possess" means any actual or constructive holding whether under claim of ownership or  
 4 not.
- 5 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation  
 6 as defined in G.S. 113-168.
- 7 ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams,  
 8 scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish  
 9 to the public at large or to a licensed shellfish dealer.~~
- 10 ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining  
 11 authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and  
 12 the placement of those materials on privately held shellfish bottoms for increased shellfish  
 13 production.~~
- 14 (k) "Shellfish production on leases and franchises" means:
- 15 (i) ~~the culture of oysters, clams, scallops, or mussels on shellfish leases and  
 16 franchises from a sublegal harvest size to a marketable size.~~
- 17 (ii) ~~the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed  
 18 due to pollution to shellfish leases and franchises in open waters and the natural  
 19 cleansing of those shellfish.~~
- 20 ~~(l)(i)~~ "Swipe net operations" means fishing a seine towed by one vessel.
- 21 ~~(m)(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private  
 22 carrier by land, sea, or air.
- 23 ~~(n)(k)~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- 24 (3) gear:
- 25 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed  
 26 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch  
 27 is dipped or bailed.
- 28 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom  
 29 at both ends or with one end anchored or attached to the bottom and the other end attached  
 30 to a vessel.
- 31 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal  
 32 Fishing Waters except:
- 33 (i) cast nets;
- 34 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension  
 35 no larger than 18 inches and that by design is collapsed at all times when in the  
 36 water, except when it is being retrieved from or lowered to the bottom;

- 1 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop  
2 or frame to which the net is attached not exceeding 60 inches along the perimeter;  
3 (iv) gigs or other pointed implements that are propelled by hand, whether or not the  
4 implement remains in the hand;  
5 (v) hand operated rakes no more than 12 inches wide and weighing no more than six  
6 pounds and hand operated tongs;  
7 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-  
8 bait trotline;  
9 (vii) landing nets used to assist in taking fish when the initial and primary method of  
10 taking is by the use of hook and line;  
11 (viii) minnow traps when no more than two are in use;  
12 (ix) seines less than 30 feet in length;  
13 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by  
14 mechanical means, including elastic tubing or bands, pressurized gas, or similar  
15 means.
- 16 (d) "Corkline" means the support structure a net is attached to that is nearest to the water  
17 surface when in use. Corkline length is measured from the outer most mesh knot at one end  
18 of the corkline following along the line to the outer most mesh knot at the opposite end of  
19 the corkline.
- 20 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth  
21 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 22 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure  
23 attached to the bottom, at both ends of the net.
- 24 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or  
25 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one  
26 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,  
27 through which fish enter the enclosure. The portion of the net designed to hold or trap fish  
28 is completely enclosed in mesh or webbing, except for the openings for fish passage into  
29 or out of the net (funnel area).
- 30 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills  
31 in its mesh as a result of net design, construction, mesh length, webbing diameter, or  
32 method in which it is used.
- 33 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest  
34 to the water surface when in use. Headrope length is measured from the outer most mesh  
35 knot at one end of the headrope following along the line to the outer most mesh knot at the  
36 opposite end of the headrope.



- 1 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or  
2 frames. The net has one or more internal funnel-shaped openings with tapered ends directed  
3 inward from the mouth, through which fish enter the enclosure. The portion of the net  
4 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the  
5 openings for fish passage into or out of the net (funnel area).
- 6 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,  
7 wire, or similar material set vertically in the water and held in place by stakes or anchors  
8 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead  
9 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 10 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,  
11 and other rakes when towed by engine power, patent tongs, kicking with propellers or  
12 deflector plates with or without trawls, and any other method that utilizes mechanical  
13 means to harvest clams.
- 14 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other  
15 rakes when towed by engine power, and any other method that utilizes mechanical means  
16 to harvest oysters.
- 17 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite  
18 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- 19 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead  
20 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and  
21 lead(s) are not conical, nor are they supported by hoops or frames.
- 22 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use  
23 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 24 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish  
25 by encirclement and confining fish within itself or against another net, the shore or bank  
26 as a result of net design, construction, mesh length, webbing diameter, or method in which  
27 it is used.
- 28 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations  
29 of fish ~~species, species throughout their entire life cycle, including early growth and development,~~  
30 as well as forage species utilized in the food chain. ~~Fish habitats as used in this definition, are vital~~  
31 ~~for portions of the entire life cycle, including the early growth and development of fish species.~~ Fish  
32 habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling,  
33 ~~include:are:~~
- 34 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems  
35 utilized by post-larval and later juvenile anadromous fish.

- 1 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of  
2 anadromous fish has been documented in Division sampling records through direct  
3 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 4 (c) "Coral" means:  
5 (i) fire corals and hydrocorals (Class Hydrozoa);  
6 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or  
7 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which  
8 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),  
9 and sea pansies (*Renilla* sp.).
- 10 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and  
11 live oysters of varying density.
- 12 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard  
13 substrate, excluding mollusk shells, but including dead coral or rock. Living marine  
14 organisms associated with hard bottoms, banks, reefs, and live rock include:  
15 (i) Coralline algae (Division Rhodophyta);  
16 (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.),  
17 green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);  
18 (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);  
19 (iv) sponges (Phylum Porifera);  
20 (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class  
21 Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, *Solengastrea*  
22 (Class Anthozoa);  
23 (vi) Bryozoans (Phylum Bryozoa);  
24 (vii) tube worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and  
25 Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);  
26 (viii) mussel banks (Phylum Mollusca: Gastropoda); and  
27 (ix) acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- 28 (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity,  
29 temperature, and other factors, young finfish and crustaceans spend the major portion of  
30 their initial growing season. Primary nursery areas are those areas in the estuarine system  
31 where initial post-larval development takes place. These are areas where populations are  
32 uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system  
33 where later juvenile development takes place. Populations are composed of developing  
34 sub-adults of similar size that have migrated from an upstream primary nursery area to the  
35 secondary nursery area located in the middle portion of the estuarine system.
- 36 (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams,  
37 oysters, scallops, mussels, and whelks use to reproduce and survive because of such

1 favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those  
2 shellfish producing areas closed to shellfish harvest due to pollution.

3 (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats  
4 that provide exceptional habitat functions or that are particularly at risk due to imminent  
5 threats, vulnerability, or rarity.

6 (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:

7 (i) are vegetated with one or more species of submerged aquatic vegetation including  
8 bushy pondweed or southern naiad (*Najas guadalupensis*), coontail  
9 (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed  
10 (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton*  
11 *perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton*  
12 *pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton*  
13 *pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche*  
14 *heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and  
15 wild celery (*Vallisneria americana*). These areas may be identified by the presence  
16 of above-ground leaves, below-ground rhizomes, or reproductive structures  
17 associated with one or more SAV species and include the sediment within these  
18 areas; or

19 (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i)  
20 of this Rule within the past 10 annual growing seasons and that meet the average  
21 physical requirements of water ~~depth (six feet or less), depth, which is six feet or~~  
22 ~~less, average light availability (secchi depth of one foot or more), availability,~~  
23 ~~which is a secchi depth of one foot or more,~~ and limited wave exposure that  
24 characterize the environment suitable for growth of SAV. The past presence of  
25 SAV may be demonstrated by aerial photography, SAV survey, map, or other  
26 documentation. An extension of the past 10 annual growing seasons criteria may  
27 be considered when average environmental conditions are altered by drought,  
28 rainfall, or storm force winds.

29 This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches  
30 or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission  
31 recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not  
32 intend the submerged aquatic vegetation definition, ~~or of~~ this Rule or 15A NCAC 03K  
33 .0304 and .0404, to apply to or conflict with the non-development control activities  
34 authorized by that Act.

35 (5) licenses, permits, leases and franchises, and record keeping:

36 (a) "Assignment" means temporary transferal to another person of privileges under a license  
37 for which assignment is permitted. The person assigning the license delegates the privileges

1 permitted under the license to be exercised by the assignee, but retains the power to revoke  
2 the assignment at any time, and is still the responsible party for the license.

3 (b) "Designee" means any person who is under the direct control of the permittee or who is  
4 employed by or under contract to the permittee for the purposes authorized by the permit.

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

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

8 (e) "Holder" means a person who has been lawfully issued in the person's name a license,  
9 permit, franchise, lease, or assignment.

10 (f) "Land" means:

11 (i) for commercial fishing operations, when fish reach the shore or a structure  
12 connected to the shore.

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

16 (iii) for recreational fishing operations, when fish are retained in possession by the  
17 fisherman.

18 (g) "Licensee" means any person holding a valid license from the Department to take or deal  
19 in marine fisheries ~~resources~~resources, except as otherwise defined in 15A NCAC 03O  
20 .0109.

21 (h) "Logbook" means paper forms provided by the Division and electronic data files generated  
22 from software provided by the Division for the reporting of fisheries statistics by persons  
23 engaged in commercial or recreational fishing or for-hire operators.

24 (i) "Master" means captain or operator of a vessel or one who commands and has control,  
25 authority, or power over a vessel.

26 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who  
27 did not possess a valid dealer license for the previous license year in that name. For  
28 purposes of license issuance, adding new categories to an existing fish dealers license does  
29 not constitute a new dealer.

30 (k) "Office of the Division" means physical locations of the Division conducting license and  
31 permit transactions in Wilmington, Morehead City, Washington, Morehead City, Roanoke  
32 Island, and Elizabeth City, and Roanoke Island, North Carolina. Other businesses or  
33 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or  
34 Coastal Recreational Fishing Licenses are not considered Offices of the Division.

35 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs  
36 operations of a business entity, such as a corporate officer or executive level supervisor of

1 business operations, and the person responsible for use of the issued license in compliance  
2 with applicable statutes and rules.

3 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise  
4 directs a recreational fishing tournament and is the holder of the Recreational Fishing  
5 Tournament License.

6 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,  
7 exchanged, bartered, distributed, or landed.

8 (o) "Transfer" means permanent transferal to another person of privileges under a license for  
9 which transfer is permitted. The person transferring the license retains no rights or interest  
10 under the license transferred.

11 (p) "Trip ticket" means paper forms provided by the Division and electronic data files  
12 generated from software provided by the Division for the reporting of fisheries statistics  
13 by licensed fish dealers.

14  
15 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*  
16 *Eff. January 1, 1991;*  
17 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*  
18 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*  
19 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*  
20 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*  
21 *Amended Eff. August 1, 2000;*  
22 *Temporary Amendment Eff. August 1, 2000;*  
23 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*  
24 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*  
25 *Readopted Eff. June 1, ~~2022~~, 2022;*  
26 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Friday, July 26, 2024 12:02 PM

**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Hi all,

Just checking in on this, I'd like to get these wrapped up today if possible, since the meeting is coming up soon.

Thanks!

Brian

Brian Liebman

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## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Thursday, July 25, 2024 4:40 PM

**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Hi Jennifer,

I think we're almost there. I am OK with the other rules, and can recommend approval. Just have one last thing for Rule 03I .0101. See below:

### 03I .0101

*In (1)(e), lines 34-35, how is the "primary mission" of an organization determined?*

Session Law 2015-241, Section 14.10A.(c) defines "nongovernmental conservation organization" as an organization whose primary mission is the conservation of natural resources. Section 14.10A.(d) of the law requires the adoption of cross-referenced rules consistent with subsection (c). Notwithstanding G.S. 150B-19(4), the rule adopted pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section.

I understand where the language comes from, and I think it would be contrary to the session law to depart from the language used in the session law. That said, I don't think the session law prevents you from defining a term such as "primary mission" or otherwise making it clear in the Rule how it is determined that an organization's primary mission is the conservation of natural resources.

Section 14.10A.(d) of the law directs the agency to amend cross-referenced rules consistent with subsection (c) of that section of the law. In an effort to avoid ambiguity while remaining consistent with subsection (c), the agency recommends modifying the text in 03I .0101(1)(e) by making the following clarification: ". . . an organization whose ~~primary~~ mission is includes the conservation of natural ~~resources~~.resources, based upon consideration of the organization's stated purpose and activities." (page 1, lines 34-36)

OK, I see what you've done and I think the second part ("based upon...") is good, but the first part (striking "primary" and swapping "is" for "includes") is problematic. As I said earlier, I don't think you can or should change the language that the Session Law directed you to use. I think you can, however, expand on it and give it meaning. So, how about this:

"Nongovernmental conservation organization" means an organization whose primary mission is the conservation of natural resources. For the purpose of this Section [or Chapter, whatever you think is appropriate], an organization's primary mission is based upon the Commission's consideration of the organization's publicly stated purpose and activities."

Thanks,  
Brian

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## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC  
**Attachments:** 15A NCAC 03I .0101\_Rev.docx; 15A NCAC 18A .0901\_Rev.docx

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**From:** Everett, Jennifer <jennifer.everett@deq.nc.gov>  
**Sent:** Thursday, July 25, 2024 12:50 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Brian,

Responses to your follow-up requests are below. In addition, attached are two rules that were addressed. Let us know if this satisfies your follow-ups.  
Thanks.

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
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Tele: (919)-707-8595  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Tuesday, July 23, 2024 10:40 AM  
**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>  
**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Good morning, all,

I have a few follow ups for a few of the rules. Right now, I think I can recommend approval of all rules except 03I .0101, 03O .0109, 03O .0503, 18A .0302, and 18A .0901. I've pulled out the particular requests I have a follow up for below, and they're in red. If you could get responses back to me by Thursday at 5:00 pm, I'd appreciate it.

03I .0101

*In (1)(e), lines 34-35, how is the "primary mission" of an organization determined?*

Session Law 2015-241, Section 14.10A.(c) defines "nongovernmental conservation organization" as an organization whose primary mission is the conservation of natural resources. Section 14.10A.(d) of the law requires the adoption of cross-referenced rules consistent with subsection (c). Notwithstanding G.S. 150B-19(4), the rule adopted pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section.

I understand where the language comes from, and I think it would be contrary to the session law to depart from the language used in the session law. That said, I don't think the session law prevents you from defining a term such as "primary mission" or otherwise making it clear in the Rule how it is determined that an organization's primary mission is the conservation of natural resources.

Section 14.10A.(d) of the law directs the agency to amend cross-referenced rules consistent with subsection (c) of that section of the law. In an effort to avoid ambiguity while remaining consistent with subsection (c), the agency recommends modifying the text in 03I .0101(1)(e) by making the following clarification: ". . . an organization whose ~~primary~~ mission is includes the conservation of natural ~~resources-resources~~, based upon consideration of the organization's stated purpose and activities." (page 1, lines 34-36)

*In (1)(f)(i), p.2, line 2, define "deleterious".*

Completed

The new language is good, except it says that it "may" include poisonous or deleterious substances as listed in the NSSP guide. What else "may" be a poisonous or deleterious substance?

The text has been further clarified by changing "may include" to "includes" (page 2, line 3).

*In (2)(d), p.3, line 17, define "adulteration".*

The request has been addressed by incorporating a definition by reference.

Is this the 2019 revision? I clicked the link and it says "current as of 10/29/20" but the latest revision there was the 2019 revision. Please specify in the Rule.

Completed (page 3, line 32)

*In (4), line 14, the Rule states that the habitats "include" the areas in (4)(a) through (i). Are there any other fish habitats in Coastal Fishing Waters that should be included here?*

No; the fish habitat areas defined in this rule correspond to requirements that are in place in other MFC rules. For example, "anadromous fish spawning areas" are defined in 15A NCAC 03I .0101(4)(b) and are designated in 15A NCAC 03R .0115. Also, "coral" is defined in 15A NCAC 03I .0101(4)(c) and "live rock" is defined in 15A NCAC 03I .0101(4)(e) and corresponding requirements are set forth in 15A NCAC 03I .0116.

Would it be clearer to say "Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, are:"

Yes; the clarification has been made (page 6, line 33).

*In (c), line 11, are the substantive requirements or contents of the assignment form described in a rule or statute?*

A list of the required items has been added to the rule. In so doing, paragraphs were renumbered and cross references to corresponding sub-paragraphs were updated.

To be clear, these are not new requirements, but are simply what the assignment form has already required?

Correct; these are not new requirements but are what the form already requires.

#### 03O .0503

*In (e)(1)(A), p.2, line 28, are the contents or substantive requirements of the forms mentioned here described in another rule or statute?*

A list of the required items has been added to the rule.

To be clear, these are not new requirements, but are simply what the form already required?

Correct; these are not new requirements but are what the form already requires.

#### 18A .0302

*In (e), line 15, are the contents or substantive requirements of the forms mentioned here described in another rule or statute?*

A list of the required items has been added to the rule.

To be clear, these are not new requirements, but are simply what the form has already required?

Correct; these are not new requirements but are what the form already requires.

#### 18A .0901

*In (5), what is "predictable intermittent pollution"? Who makes the prediction? Also, how often does pollution have to occur to be classified as "intermittent"?*

Conditionally approved areas are areas that are largely suitable for shellfish growing but are subject to predictable intermittent pollution that, at times, causes water quality to fall below acceptable levels. Predictable intermittent pollution is pollution that can be anticipated under particular environmental conditions such as rainfall, temperature, or seasonal weather patterns, based upon previous observations or studies by the DMF. For areas classified as conditionally approved, the DMF must develop a conditional area management plan. The management plan is area-specific and includes "known" and "predictable" factors affecting water quality. An example is a growing area that temporarily does not meet approved standards after a certain threshold of rainfall (due to runoff, sedimentation, etc., from the rainfall into the growing area). If the conditions to establish when an area meets approved standards are not known or predictable, then it would not be possible to develop the required management plan for that area and the area would need to remain closed.

"Intermittent" pollution is not continuous but occurs more often than historic weather events like hurricanes or 100-year flood events. The pollution occurs as a foreseeable result of common, periodic and expected environmental factors like significant rainfall events, seasonal temperature shifts, or particular tide and wind conditions.

Based on the response above, it sounds like you have a pretty solid definition of “predictable intermittent pollution”. I think you should add it to the rule, for the sake of clarity.

The text has been clarified by referring to existing criteria in a separate MFC rule (page 1, lines 15-16).

Thanks!

Brian

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1 15A NCAC 03I .0101 is amended with changes as published in 38:03 NCR 107-113 as follows:

2  
3 **SUBCHAPTER 03I – GENERAL RULES**

4  
5 **SECTION .0100 – GENERAL RULES**

6  
7 **15A NCAC 03I .0101 DEFINITIONS**

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

9 (1) enforcement and management terms:

10 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial  
11 fishing operations.

12 (b) "Educational institution" means a college, university, or community college accredited by  
13 an accrediting agency recognized by the U.S. Department of Education; an Environmental  
14 Education Center certified by the N.C. Department of Environmental Quality Office of  
15 Environmental Education and Public Affairs; or a zoo or aquarium certified by the  
16 Association of Zoos and Aquariums.

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

19 (d) length of finfish:

20 (i) "Curved fork length" means a length determined by measuring along a line tracing  
21 the contour of the body from the tip of the upper jaw to the middle of the fork in  
22 the caudal (tail) fin.

23 (ii) "Fork length" means a length determined by measuring along a straight line the  
24 distance from the tip of the snout with the mouth closed to the middle of the fork  
25 in the caudal (tail) fin, except that fork length for billfish is measured from the tip  
26 of the lower jaw to the middle of the fork of the caudal (tail) fin.

27 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal  
28 insertion of the pectoral fin to the fork of the tail measured along the contour of  
29 the body in a line that runs along the top of the pectoral fin and the top of the  
30 caudal keel.

31 (iv) "Total length" means a length determined by measuring along a straight line the  
32 distance from the tip of the snout with the mouth closed to the tip of the  
33 compressed caudal (tail) fin.

34 (e) "Nongovernmental conservation organization" means an organization whose primary  
35 mission is – includes the conservation of natural resources-resources, based upon  
36 consideration of the organization's stated purpose and activities.

37 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:

- 1 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous  
2 or deleterious substances, or marine biotoxins that render the consumption of  
3 shellfish from those growing waters ~~hazardous;hazardous~~. This includes  
4 poisonous or deleterious substances as listed in the latest approved edition of the  
5 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan  
6 Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action  
7 Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances  
8 in Seafood, which is incorporated by reference, including subsequent amendments  
9 and editions. A copy of the reference material can be found at  
10 <https://www.fda.gov/food/federalstate-food-programs/national-shellfish->  
11 sanitation-program-nssp, at no cost;
- 12 (ii) that have been determined through a sanitary survey as defined in 15A NCAC  
13 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source  
14 outfall ~~with public health significance;~~that may contaminate shellfish and cause a  
15 food safety hazard as defined in 15A NCAC 18A .0301;
- 16 (iii) that have been determined through a sanitary survey as defined in 15A NCAC  
17 18A .0901 to be in or adjacent to a marina;
- 18 (iv) that have been determined through a sanitary survey as defined in 15A NCAC  
19 18A .0901 to be impacted by other potential sources of pollution that render the  
20 consumption of shellfish from those growing waters ~~hazardous;hazardous, such~~  
21 as a wastewater treatment facility that does not contaminate a shellfish area when  
22 it is operating normally but will contaminate a shellfish area and shellfish in that  
23 area when a malfunction occurs; or
- 24 (v) where the Division of Marine Fisheries is unable to complete the monitoring  
25 necessary to determine the presence of contamination or potential pollution  
26 sources.
- 27 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,  
28 area, means, and methods where take or possession is for a recreational purpose.
- 29 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational  
30 purpose.
- 31 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by  
32 the Fisheries Director through proclamation authority.
- 33 (j) "Scientific institution" means one of the following entities:  
34 (i) an educational institution as defined in this Item;  
35 (ii) a state or federal agency charged with the management of marine or estuarine  
36 resources; or

1 (iii) a professional organization or secondary school working under the direction of,  
2 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)  
3 of this Item.

4 (2) fishing activities:

5 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of  
6 marine or estuarine resources, or other non-native species that may thrive if introduced into  
7 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of  
8 rearing on private bottom (with or without the superadjacent water column) or in a  
9 controlled environment. A controlled environment provides and maintains throughout the  
10 rearing process one or more of the following:

- 11 (i) food;
- 12 (ii) predator protection;
- 13 (iii) salinity;
- 14 (iv) temperature controls; or
- 15 (v) water circulation, utilizing technology not found in the natural environment.

16 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available  
17 to work the gear and be within 100 yards of any gear in use by that person at all times.  
18 Attended does not include being in a building or structure.

19 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former  
20 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a  
21 controlled environment. A controlled environment provides and maintains throughout the  
22 shedding process one or more of the following:

- 23 (i) food;
- 24 (ii) predator protection;
- 25 (iii) salinity;
- 26 (iv) temperature controls; or
- 27 (v) water circulation, utilizing technology not found in the natural environment. A  
28 shedding operation does not include transporting pink or red-line peeler crabs to  
29 a permitted shedding operation.

30 (d) "Depuration" means mechanical purification or the removal of adulteration from live  
31 oysters, clams, or mussels by any artificially controlled means."Depurate" or "depuration"  
32 has the same meaning as defined in the 2019 revision of the NSSP Guide for the Control  
33 of Molluscan Shellfish, Section I: Purpose and Definitions. This definition is incorporated  
34 by reference, not including subsequent amendments and editions. A copy of the reference  
35 material can be found at [https://www.fda.gov/food/federalstate-food-programs/national-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)  
36 shellfish-sanitation-program-nssp, at no cost.

37 (e) "Long haul operation" means fishing a seine towed between two vessels.

- 1 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and  
 2 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 3 (g) "Possess" means any actual or constructive holding whether under claim of ownership or  
 4 not.
- 5 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation  
 6 as defined in G.S. 113-168.
- 7 ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams,  
 8 scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish  
 9 to the public at large or to a licensed shellfish dealer.~~
- 10 ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining  
 11 authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and  
 12 the placement of those materials on privately held shellfish bottoms for increased shellfish  
 13 production.~~
- 14 (k) "Shellfish production on leases and franchises" means:
- 15 (i) ~~the culture of oysters, clams, scallops, or mussels on shellfish leases and  
 16 franchises from a sublegal harvest size to a marketable size.~~
- 17 (ii) ~~the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed  
 18 due to pollution to shellfish leases and franchises in open waters and the natural  
 19 cleansing of those shellfish.~~
- 20 ~~(l)(i)~~ "Swipe net operations" means fishing a seine towed by one vessel.
- 21 ~~(m)(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private  
 22 carrier by land, sea, or air.
- 23 ~~(n)(k)~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- 24 (3) gear:
- 25 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed  
 26 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch  
 27 is dipped or bailed.
- 28 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom  
 29 at both ends or with one end anchored or attached to the bottom and the other end attached  
 30 to a vessel.
- 31 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal  
 32 Fishing Waters except:
- 33 (i) cast nets;
- 34 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension  
 35 no larger than 18 inches and that by design is collapsed at all times when in the  
 36 water, except when it is being retrieved from or lowered to the bottom;



- 1 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop  
2 or frame to which the net is attached not exceeding 60 inches along the perimeter;
- 3 (iv) gigs or other pointed implements that are propelled by hand, whether or not the  
4 implement remains in the hand;
- 5 (v) hand operated rakes no more than 12 inches wide and weighing no more than six  
6 pounds and hand operated tongs;
- 7 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-  
8 bait trotline;
- 9 (vii) landing nets used to assist in taking fish when the initial and primary method of  
10 taking is by the use of hook and line;
- 11 (viii) minnow traps when no more than two are in use;
- 12 (ix) seines less than 30 feet in length;
- 13 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by  
14 mechanical means, including elastic tubing or bands, pressurized gas, or similar  
15 means.
- 16 (d) "Corkline" means the support structure a net is attached to that is nearest to the water  
17 surface when in use. Corkline length is measured from the outer most mesh knot at one end  
18 of the corkline following along the line to the outer most mesh knot at the opposite end of  
19 the corkline.
- 20 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth  
21 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 22 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure  
23 attached to the bottom, at both ends of the net.
- 24 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or  
25 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one  
26 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,  
27 through which fish enter the enclosure. The portion of the net designed to hold or trap fish  
28 is completely enclosed in mesh or webbing, except for the openings for fish passage into  
29 or out of the net (funnel area).
- 30 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills  
31 in its mesh as a result of net design, construction, mesh length, webbing diameter, or  
32 method in which it is used.
- 33 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest  
34 to the water surface when in use. Headrope length is measured from the outer most mesh  
35 knot at one end of the headrope following along the line to the outer most mesh knot at the  
36 opposite end of the headrope.

- 1 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or  
2 frames. The net has one or more internal funnel-shaped openings with tapered ends directed  
3 inward from the mouth, through which fish enter the enclosure. The portion of the net  
4 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the  
5 openings for fish passage into or out of the net (funnel area).
- 6 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,  
7 wire, or similar material set vertically in the water and held in place by stakes or anchors  
8 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead  
9 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 10 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,  
11 and other rakes when towed by engine power, patent tongs, kicking with propellers or  
12 deflector plates with or without trawls, and any other method that utilizes mechanical  
13 means to harvest clams.
- 14 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other  
15 rakes when towed by engine power, and any other method that utilizes mechanical means  
16 to harvest oysters.
- 17 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite  
18 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- 19 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead  
20 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and  
21 lead(s) are not conical, nor are they supported by hoops or frames.
- 22 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use  
23 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 24 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish  
25 by encirclement and confining fish within itself or against another net, the shore or bank  
26 as a result of net design, construction, mesh length, webbing diameter, or method in which  
27 it is used.
- 28 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations  
29 of fish ~~species, species throughout their entire life cycle, including early growth and development,~~  
30 as well as forage species utilized in the food chain. ~~Fish habitats as used in this definition, are vital~~  
31 ~~for portions of the entire life cycle, including the early growth and development of fish species.~~ Fish  
32 habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling,  
33 ~~include:are:~~
- 34 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems  
35 utilized by post-larval and later juvenile anadromous fish.

- 1 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of  
2 anadromous fish has been documented in Division sampling records through direct  
3 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 4 (c) "Coral" means:  
5 (i) fire corals and hydrocorals (Class Hydrozoa);  
6 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or  
7 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which  
8 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),  
9 and sea pansies (*Renilla* sp.).
- 10 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and  
11 live oysters of varying density.
- 12 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard  
13 substrate, excluding mollusk shells, but including dead coral or rock. Living marine  
14 organisms associated with hard bottoms, banks, reefs, and live rock include:  
15 (i) Coralline algae (Division Rhodophyta);  
16 (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.),  
17 green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);  
18 (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);  
19 (iv) sponges (Phylum Porifera);  
20 (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class  
21 Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, *Solengastrea*  
22 (Class Anthozoa);  
23 (vi) Bryozoans (Phylum Bryozoa);  
24 (vii) tube worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and  
25 Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);  
26 (viii) mussel banks (Phylum Mollusca: Gastropoda); and  
27 (ix) acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- 28 (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity,  
29 temperature, and other factors, young finfish and crustaceans spend the major portion of  
30 their initial growing season. Primary nursery areas are those areas in the estuarine system  
31 where initial post-larval development takes place. These are areas where populations are  
32 uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system  
33 where later juvenile development takes place. Populations are composed of developing  
34 sub-adults of similar size that have migrated from an upstream primary nursery area to the  
35 secondary nursery area located in the middle portion of the estuarine system.
- 36 (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams,  
37 oysters, scallops, mussels, and whelks use to reproduce and survive because of such

1 favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those  
2 shellfish producing areas closed to shellfish harvest due to pollution.

3 (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats  
4 that provide exceptional habitat functions or that are particularly at risk due to imminent  
5 threats, vulnerability, or rarity.

6 (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:

7 (i) are vegetated with one or more species of submerged aquatic vegetation including  
8 bushy pondweed or southern naiad (*Najas guadalupensis*), coontail  
9 (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed  
10 (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton*  
11 *perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton*  
12 *pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton*  
13 *pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche*  
14 *heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and  
15 wild celery (*Vallisneria americana*). These areas may be identified by the presence  
16 of above-ground leaves, below-ground rhizomes, or reproductive structures  
17 associated with one or more SAV species and include the sediment within these  
18 areas; or

19 (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i)  
20 of this Rule within the past 10 annual growing seasons and that meet the average  
21 physical requirements of water ~~depth (six feet or less), depth, which is six feet or~~  
22 ~~less, average light availability (secchi depth of one foot or more), availability,~~  
23 ~~which is a secchi depth of one foot or more,~~ and limited wave exposure that  
24 characterize the environment suitable for growth of SAV. The past presence of  
25 SAV may be demonstrated by aerial photography, SAV survey, map, or other  
26 documentation. An extension of the past 10 annual growing seasons criteria may  
27 be considered when average environmental conditions are altered by drought,  
28 rainfall, or storm force winds.

29 This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches  
30 or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission  
31 recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not  
32 intend the submerged aquatic vegetation definition, ~~or of~~ this Rule or 15A NCAC 03K  
33 .0304 and .0404, to apply to or conflict with the non-development control activities  
34 authorized by that Act.

35 (5) licenses, permits, leases and franchises, and record keeping:

36 (a) "Assignment" means temporary transferal to another person of privileges under a license  
37 for which assignment is permitted. The person assigning the license delegates the privileges

1 permitted under the license to be exercised by the assignee, but retains the power to revoke  
2 the assignment at any time, and is still the responsible party for the license.

3 (b) "Designee" means any person who is under the direct control of the permittee or who is  
4 employed by or under contract to the permittee for the purposes authorized by the permit.

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

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

8 (e) "Holder" means a person who has been lawfully issued in the person's name a license,  
9 permit, franchise, lease, or assignment.

10 (f) "Land" means:

11 (i) for commercial fishing operations, when fish reach the shore or a structure  
12 connected to the shore.

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

16 (iii) for recreational fishing operations, when fish are retained in possession by the  
17 fisherman.

18 (g) "Licensee" means any person holding a valid license from the Department to take or deal  
19 in marine fisheries ~~resources~~resources, except as otherwise defined in 15A NCAC 03O  
20 .0109.

21 (h) "Logbook" means paper forms provided by the Division and electronic data files generated  
22 from software provided by the Division for the reporting of fisheries statistics by persons  
23 engaged in commercial or recreational fishing or for-hire operators.

24 (i) "Master" means captain or operator of a vessel or one who commands and has control,  
25 authority, or power over a vessel.

26 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who  
27 did not possess a valid dealer license for the previous license year in that name. For  
28 purposes of license issuance, adding new categories to an existing fish dealers license does  
29 not constitute a new dealer.

30 (k) "Office of the Division" means physical locations of the Division conducting license and  
31 permit transactions in Wilmington, Morehead City, Washington, Morehead City, Roanoke  
32 Island, and Elizabeth City, and Roanoke Island, North Carolina. Other businesses or  
33 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or  
34 Coastal Recreational Fishing Licenses are not considered Offices of the Division.

35 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs  
36 operations of a business entity, such as a corporate officer or executive level supervisor of

1 business operations, and the person responsible for use of the issued license in compliance  
2 with applicable statutes and rules.

3 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise  
4 directs a recreational fishing tournament and is the holder of the Recreational Fishing  
5 Tournament License.

6 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,  
7 exchanged, bartered, distributed, or landed.

8 (o) "Transfer" means permanent transferal to another person of privileges under a license for  
9 which transfer is permitted. The person transferring the license retains no rights or interest  
10 under the license transferred.

11 (p) "Trip ticket" means paper forms provided by the Division and electronic data files  
12 generated from software provided by the Division for the reporting of fisheries statistics  
13 by licensed fish dealers.

14  
15 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*  
16 *Eff. January 1, 1991;*  
17 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*  
18 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*  
19 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*  
20 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*  
21 *Amended Eff. August 1, 2000;*  
22 *Temporary Amendment Eff. August 1, 2000;*  
23 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*  
24 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*  
25 *Readopted Eff. June 1, ~~2022~~, 2022;*  
26 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

1 15A NCAC 18A .0901 is amended with changes as published in 38:03 NCR 142-143 as follows:

2  
3 **SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**

4  
5 **15A NCAC 18A .0901 DEFINITIONS**

6 The following definitions shall apply to this Section.

- 7 (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting  
8 of shellfish for direct market purposes.
- 9 (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area  
10 with restricted tidal flow.
- 11 (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as  
12 determined by a plate count.
- 13 (4) "Commercial marina" means a marina that offers one or more of the following services: fuel,  
14 transient dockage, haul-out facilities, or repair services.
- 15 (5) "Conditionally approved" means shellfish growing waters that ~~are subject to predictable intermittent~~  
16 ~~pollution but meet the criteria in 15A NCAC 18A .0905~~ that may be used for harvesting shellfish  
17 for direct market purposes when management plan criteria are met.
- 18 (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- 19 (7) "Estimated 90<sup>th</sup> percentile" means a statistic that measures the variability in a sample set that shall  
20 be calculated by:
- 21 (a) calculating the arithmetic mean and standard deviation of the sample result logarithms  
22 (base 10);
- 23 (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
- 24 (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
- 25 (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the  
26 estimated 90<sup>th</sup> percentile.
- 27 (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a  
28 multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C  
29 plus or minus 0.2° C in a water bath.
- 30 (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- 31 (10) "Marina" means any water area with a ~~structure (such structure, such~~ as a dock, basin, ~~or~~ floating  
32 ~~dock) dock,~~ that is utilized for docking or otherwise mooring vessels and constructed to provide  
33 temporary or permanent docking space for more than 10 boats.
- 34 (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and  
35 accumulated by shellstock.
- 36 (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the  
37 two middle numbers when the sequence has an even number of numbers.

- 1 (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit  
2 volume and is determined from the number of positive results in a series of fermentation tubes.
- 3 (14) "National Shellfish Sanitation Program (NSSP)" means the federal and state cooperative federal-  
4 state industry program recognized by the U.S. Food and Drug Administration (FDA) and the  
5 Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish that is adequate  
6 to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of  
7 Molluscan Shellfish will be safe and sanitary produced and sold for human consumption.
- 8 (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been  
9 impeded by natural or man-made barriers.
- 10 (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- 11 (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct  
12 market purposes.
- 13 (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be  
14 unsafe for the harvest of shellfish for human consumption.
- 15 (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit  
16 and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish  
17 safe for human consumption.
- 18 (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish  
19 growing area including sources of pollution, the effects of wind, tides, and currents in the  
20 distribution and dilution of polluting materials, and the bacteriological quality of water.
- 21 (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops  
22 when the final product is the shucked adductor muscle only.
- 23 (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey  
24 and that is used to track the location where shellfish are harvested.
- 25 (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish  
26 life.
- 27 (24) "Shellstock" means live molluscan shellfish in the shell.
- 28 (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any  
29 potential or actual pollution sources or other environmental factors that may impact the sanitary  
30 quality of a shellfish growing area.
- 31 (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the  
32 bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution  
33 and scheduled sufficiently far in advance to support random collection with respect to environmental  
34 conditions.

35  
36 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*  
37 *Eff. June 1, 1989;*



1 *Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;*  
2 *Readopted Eff. May 1, ~~2021~~-2021;*  
3 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*

## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Tuesday, July 23, 2024 10:40 AM

**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Good morning, all,

I have a few follow ups for a few of the rules. Right now, I think I can recommend approval of all rules except 03I .0101, 03O .0109, 03O .0503, 18A .0302, and 18A .0901. I've pulled out the particular requests I have a follow up for below, and they're in red. If you could get responses back to me by Thursday at 5:00 pm, I'd appreciate it.

### 03I.0101

*In (1)(e), lines 34-35, how is the "primary mission" of an organization determined?*

Session Law 2015-241, Section 14.10A.(c) defines "nongovernmental conservation organization" as an organization whose primary mission is the conservation of natural resources. Section 14.10A.(d) of the law requires the adoption of cross-referenced rules consistent with subsection (c). Notwithstanding G.S. 150B-19(4), the rule adopted pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section.

I understand where the language comes from, and I think it would be contrary to the session law to depart from the language used in the session law. That said, I don't think the session law prevents you from defining a term such as "primary mission" or otherwise making it clear in the Rule how it is determined that an organization's primary mission is the conservation of natural resources.

*In (1)(f)(i), p.2, line 2, define "deleterious".*

### Completed

The new language is good, except it says that it "may" include poisonous or deleterious substances as listed in the Nssp guide. What else "may" be a poisonous or deleterious substance?

*In (2)(d), p.3, line 17, define "adulteration".*

The request has been addressed by incorporating a definition by reference.

Is this the 2019 revision? I clicked the link and it says "current as of 10/29/20" but the latest revision there was the 2019 revision. Please specify in the Rule.

*In (4), line 14, the Rule states that the habitats "include" the areas in (4)(a) through (i). Are there any other fish habitats in Coastal Fishing Waters that should be included here?*

No; the fish habitat areas defined in this rule correspond to requirements that are in place in other MFC rules. For example, "anadromous fish spawning areas" are defined in 15A NCAC 03I .0101(4)(b) and are designated in 15A NCAC 03R .0115. Also, "coral" is defined in 15A NCAC 03I .0101(4)(c) and "live rock" is defined in 15A NCAC 03I .0101(4)(e) and corresponding requirements are set forth in 15A NCAC 03I .0116.

Would it be clearer to say "Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, are:"

#### 03O .0109

*In (c), line 11, are the substantive requirements or contents of the assignment form described in a rule or statute?*

A list of the required items has been added to the rule. In so doing, paragraphs were renumbered and cross references to corresponding sub-paragraphs were updated.

To be clear, these are not new requirements, but are simply what the assignment form has already required?

#### 03O .0503

*In (e)(1)(A), p.2, line 28, are the contents or substantive requirements of the forms mentioned here described in another rule or statute?*

A list of the required items has been added to the rule.

To be clear, these are not new requirements, but are simply what the form already required?

#### 18A .0302

*In (e), line 15, are the contents or substantive requirements of the forms mentioned here described in another rule or statute?*

A list of the required items has been added to the rule.

To be clear, these are not new requirements, but are simply what the form has already required?

#### 18A .0901

*In (5), what is "predictable intermittent pollution"? Who makes the prediction? Also, how often does pollution have to occur to be classified as "intermittent"?*

Conditionally approved areas are areas that are largely suitable for shellfish growing but are subject to predictable intermittent pollution that, at times, causes water quality to fall below acceptable levels. Predictable intermittent pollution is pollution that can be anticipated under particular environmental conditions such as rainfall, temperature, or seasonal weather patterns, based upon previous observations or studies by the DMF. For areas classified as conditionally approved, the DMF must develop a conditional area management plan. The management plan is area-specific and includes "known" and "predictable" factors affecting water quality. An example is a growing area that temporarily does not meet approved standards after a certain threshold of rainfall (due to runoff, sedimentation, etc., from the rainfall into the growing area). If the conditions to establish when an area meets approved standards are not known or predictable, then it would not be possible to develop the required management plan for that area and the area would need to remain closed.

"Intermittent" pollution is not continuous but occurs more often than historic weather events like hurricanes or 100-year flood events. The pollution occurs as a foreseeable result of common, periodic

and expected environmental factors like significant rainfall events, seasonal temperature shifts, or particular tide and wind conditions.

Based on the response above, it sounds like you have a pretty solid definition of “predictable intermittent pollution”. I think you should add it to the rule, for the sake of clarity.

Thanks!

Brian

Brian Liebman  
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(984)236-1948  
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## Burgos, Alexander N

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**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Thursday, July 18, 2024 4:29 PM

**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Thanks, Jennifer. I will review and get back to you shortly with any follow ups.

Have a great rest of your day!

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

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## Burgos, Alexander N

---

**Subject:** FW: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC  
**Attachments:** 15A NCAC 03I .0101.docx; 15A NCAC 03I .0113.docx; 15A NCAC 03K .0101.docx; 15A NCAC 03K .0301.docx; 15A NCAC 03O .0101.docx; 15A NCAC 03O .0109.docx; 15A NCAC 03O .0501.docx; 15A NCAC 03O .0503.docx; 15A NCAC 03R .0117 Supporting Maps.pdf; 15A NCAC 18A .0302.docx; 15A NCAC 18A .0901.docx; 15A NCAC 18A .0906.docx; 2024.07 - MFC Request for Changes - 03I, K, O, R, 18A\_MFC responses.docx

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**From:** Everett, Jennifer <jennifer.everett@deq.nc.gov>

**Sent:** Thursday, July 18, 2024 3:43 PM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>

**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Brian,

Attached are the re-written rules that address your technical change requests as well as agency responses. In addition, there are maps in the pdf for any commissioners interested in viewing these.

Alex, the folks cc'd here will need Webex invites in the event questions arise at the RRC meeting.

Thanks!

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8595  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0101

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

***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 (1)(e), lines 34-35, how is the “primary mission” of an organization determined?*

Session Law 2015-241, Section 14.10A.(c) defines "nongovernmental conservation organization" as an organization whose primary mission is the conservation of natural resources. Section 14.10A.(d) of the law requires the adoption of cross-referenced rules consistent with subsection (c). Notwithstanding G.S. 150B-19(4), the rule adopted pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section.

*In (1)(f)(i), p.2, line 2, define “deleterious”.*

Completed

*In (1)(f)(ii), line 6, how is it determined that a point source outfall has “public health significance”? Also, what does “public health significance” mean in this context?*

The text has been clarified by referencing an existing definition in a separate MFC rule.

*In (1)(f)(iv), line 10, how are shellfish polluted if they are impacted by a “potential” source of pollution? “Potential” is defined by Merriam-Webster as “existing in possibility, capable of development into actuality” which indicates that it is not presently a source of pollution. Please clarify.*

The text has been clarified by providing an example.

*In (1)(f)(v), lines 12-14, to clarify, when the Division lacks information as to the quality of shellfish growing waters, they default to designating such waters as “polluted”?*

Yes; that is correct. Waters are only able to be designated as approved (opened to shellfish harvest) if data exist and show certain microbiological criteria as found in 15A NCAC 18A .0904.

*In (1)(j)(ii), line 23, capitalize “state” if referring only to the State of North Carolina.*

In this usage, "state" refers to any state agency charged with the management of marine or estuarine resources, not just a North Carolina agency.

*In (2)(d), p.3, line 17, define “adulteration”.*

The request has been addressed by incorporating a definition by reference.

*In (4), p.6, lines 11-13, the sentence “Fish habitats as used in this definition . . . of fish species.” does not appear to meet the definition of a rule under 150B-2(8a) as written. Consider deleting this sentence and folding the relevant portions into the previous sentence as follows:*

*“Fish habitat areas” means the estuarine and marine areas that support juvenile and adult populations of fish species throughout their entire life cycle, including early growth and development, as well as forage species utilized in the food chain.*

The text has been updated as suggested.

*In (4), line 14, the Rule states that the habitats “include” the areas in (4)(a) through (i). Are there any other fish habitats in Coastal Fishing Waters that should be included here?*

No; the fish habitat areas defined in this rule correspond to requirements that are in place in other MFC rules. For example, "anadromous fish spawning areas" are defined in 15A NCAC 03I .0101(4)(b) and are designated in 15A NCAC 03R .0115. Also, "coral" is defined in 15A NCAC 03I .0101(4)(c) and "live rock" is defined in 15A NCAC 03I .0101(4)(e) and corresponding requirements are set forth in 15A NCAC 03I .0116.

*In (4)(a), line 15, is “riverine” part of the “estuarine” or “marine” areas referenced in (4)?*

Yes

*In (4)(i)(ii), p.8, lines 3-4, please take out the parentheses and include the information in the body of the rule.*

Completed

*In (4)(i), line 13, did you mean “of this Rule” instead of “or this Rule”?*

Yes; the correction has been made.



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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0113

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

***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)(15), line 25, does MFC's statutory authority to collect records extend to social and economic data about the fisherman? Please specifically cite the statute(s) that gives you that authority.*

Under G.S. 113-181(a), "the Department may collect such statistics, market information, and research data as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina and the conservation of marine and estuarine resources generally; . . ." This is not limited to biological data about what is being caught. Additionally, G.S. 113-174.1(g) states "Reporting Requirements – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division."

*Also, in (b)(15), please define what "social and economic data" means in this context. What data are you intending to collect?*

The text has been clarified so that it reads "fishing expenditures and durable goods." This language is consistent with federal data collection efforts for social and economic data, such as the Marine Recreational Fishing Expenditure Survey (see <https://www.fisheries.noaa.gov/national/socioeconomics/marine-recreational-fishing-expenditure-survey#:~:text=The%20Marine%20Recreational%20Fishing%20Expenditures,contribute%20to%20more%20informed%20decisions>). Fishing expenditures and durable goods can include items such as fishing gear and tackle, other fishing related equipment, fishing licenses, boats, and vehicles used for fishing. Different social and economic surveys focus on different components of fishing, but all potential components of social and economic data surveys would be covered by "fishing expenditures and durable goods."

*In (d), do you have statutory authority for this provision? I believe you have the authority to criminalize failure to comply with data collection under your statutes, but*

Brian Liebman

Commission Counsel

Date submitted to agency: July 3, 2024

*I am not sure the cited statutes extend to barring harassment. Please specifically cite the statute(s) that give you this authority.*

The text in Paragraphs (a), (d), and (e) has been updated to align with the MFC authority under G.S. 113-181.

*In (d), line 31, the references to the CFR don't really define the terms listed here. The Rule just seems to repeat the content of the CFR. I don't think these terms are necessarily unclear, but I'm not sure what this provision is doing.*

The text has been removed.

*In your History Note, I don't understand the reference to 113-221.2. Why is this cited?*

Session Law 2011-145 transferred under a Type I transfer the Shellfish Sanitation and Recreational Water Quality Section from the Division of Environmental Health to the Division of Marine Fisheries within the Department of Environment and Natural Resources (now Department of Environmental Quality) and the associated power and duty for the Marine Fisheries Commission (MFC) to protect the public health under its jurisdiction. As a result, the authority for rulemaking for the sanitation requirements for the harvesting, processing and handling of scallops, shellfish and crustacea was transferred to the MFC and is now contained in G.S. 113-221.2. Additionally, the authority for rulemaking to provide for a water quality monitoring program for the coastal recreation waters of the State and to allow the Department to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000 was transferred to the MFC and is now contained in G.S. 113-221.3. In the course of responding to this request the agency identified the need to also add G.S. 113-221.3 to the history note.

*In your History Note, should you cite to G.S. 113-135 for the provision that failure to comply with the MFC's rules is unlawful?*

G.S. 113-135 has been added to the history note of the rule.

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

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0101

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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 (a)(2) and (3), in the interests of clarity for your regulated public, please cross reference the rules describing the Aquaculture Seed Transplant Permit and the Shellfish Relocation Permit, as you did in (a)(1) for the Depuration permit.*

The cross reference in (a)(2) has been added. There is not a current rule to cross reference in (a)(3) because the Shellfish Relocation Permit is currently implemented through proclamation pursuant to G.S. 113-221.1, 15A NCAC 03H .0103, and 15A NCAC 03O .0506. The MFC anticipates amending 15A NCAC .03O .0503 to incorporate this process, but recent amendments are subject to Rules Review Commission and legislative review and thus the rule cannot be amended further at present. The Shellfish Relocation Permit authorized by proclamation increases access to shellfish and avoids unnecessary loss that would otherwise occur when maintenance dredging, construction, or other development would destroy shellfish in polluted areas.

*In (b), are the maps and proclamations available on your website as well? Consider adding that to the Rule if so.*

Yes; the URL to the corresponding DMF webpage has been added to the rule. The DMF phone number changed in early 2024, so the number was also updated in that same sentence.

*In (d), line 28, do you mean "polluted water" as defined by NC's laws, or under the law of the state or country where the shellfish was harvested? Please revise and clarify.*

The text has been clarified.

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0110

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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 (a), line 5, is the Model Ordinance incorporated by reference anywhere in your Rules?*

Yes; portions of the Model Ordinance are incorporated in several Marine Fisheries Commission rules, including 15A NCAC 18A .0301, .0402, .0428, .0430, .0701, .0801, .0909, and .0914.

*In the list following (a), you've deleted "or" at lines 14 and 18, indicating that the list is conjunctive, rather than disjunctive. However, line 10 states that the Fisheries Director may impose requirements on "any" of the following. What's the intent of the change?*

The intent of using "and" is to provide that a single proclamation may address more than one of these items.

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03K .0301

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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), when do paragraph (a) of this Rule and the area limitations in Rule .0302 apply? You can apply and suspend rules and portions of rules by proclamation, but if you're doing it by rule, a waiver provision must "establish specific guidelines the agency must follow in determining whether to waive or modify" the requirements of the Rule.*

The text of Paragraph (b) has been clarified by pointing to 15A NCAC 03K .0101, which sets forth when the requirements of 15A NCAC 03K .0301(b)(1) and (b)(2) apply.

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0101

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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 (a), line 11, should it say “available from license agents” instead of “available at license agents”?*

Yes; the change has been made.

*In (b), line 12, I believe “purpose” should be plural.*

Completed

*In (c), lines 16-17, how long will the Division hold an incomplete application before returning it?*

The timeframe has been added to the rule.

*In (c)(3), line 25, please capitalize “state” if referring to the State of North Carolina.*

In this usage, "state" refers to all USA states, not just North Carolina.

*In (c)(4), line 28, what is a “marine or estuarine resource conviction”? Can you be more specific, in the rule, as to what constitutes a “marine or estuarine resource conviction”?*

The text has been clarified.

*In (d), p.2, line 8, what are you requiring when asking for “certification” of the state of residency?*

The text has been clarified to change "certification of the state of residency" to "a notarized certification from the applicant stating the state where they are a resident".

*In (d)(1), line 10, to be clear, a non-resident applicant has to only “certify” his residency, but a resident of the state of North Carolina must notarize the certification. Is that your intent?*

Each applicant is required to adhere to the same requirements, regardless of whether they are a resident of North Carolina or another state. The applicant must provide a notarized certification of their state of residence, which has been clarified by the changes in line 8 (now lines 11-12), described just above.

*In (e)(1), line 30, please spell out the first usage of CRFL.*

The "Blanket For-Hire Captain's CRFL" and the "Blanket For-Hire Vessel CRFL" are set out in G.S. 113-174.3(c)(1) and (c)(2), respectively. G.S. 113-174(1a) defines "CRFL" to mean "Coastal Recreational Fishing License".

*In (e)(1), line 30, is there a reason that the first usage of “certification” is modified by “valid” and the second is not?*

The word "valid" has been added preceding the second usage of "certification".

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



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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0109

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

***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 (c), line 11, are the substantive requirements or contents of the assignment form described in a rule or statute?*

*A list of the required items has been added to the rule. In so doing, paragraphs were renumbered and cross references to corresponding sub-paragraphs were updated.*

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 030 .0201

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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:

*Pursuant to SL 2019-37, s.3.(d), the permanent rule adopted to implement the session law is "not subject to Part 3 of Article 2A of Chapter 150B" and will become effective under G.S. 150B-21.3(b1), as if the rule had received 10 letters requesting legislative review. Thus, this rule is not properly before the RRC for review.*

The rule was refiled to OAH on July 3, 2024, with the "Rule exempt from RRC review" box in block 4 of Form 0400 checked "yes".

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0501

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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 (a)(6), what additional information are you requiring? Are these specific permit requirements as described in Rule .0503, or are there others?*

Subparagraph (a)(6) has been removed.

*In (h), p.3, lines 4-5, how long will the Division hold an incomplete application before returning it to the applicant?*

The timeframe has been added to the rule.

*In (j), line 12, what other factors will the Fisheries Director or his or her agent evaluate?*

The text has been clarified by changing "factors such as the following:" to "the following factors:".

*In (j)(2), line 15, what is a "valid justification" for a permit? How would an applicant demonstrate a valid justification?*

The text has been clarified by changing "the applicant's demonstration of a valid justification" to "whether the permit application meets the requirements".

*In (j)(3), line 16, what constitutes a "fisheries violation"?*

The text has been clarified.

*In (k), line 17, under what circumstances would the MFC modify a permit? According to what criteria?*

The text has been clarified to indicate permit "application", not the permit itself. The paragraph sets out requirements for an iterative process to ensure all required information can be submitted for an application.

Brian Liebman  
Commission Counsel

Date submitted to agency: July 3, 2024

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0503

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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 (e)(1)(A), p.2, line 28, are the contents or substantive requirements of the forms mentioned here described in another rule or statute?*

[A list of the required items has been added to the rule.](#)

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 03R .0117

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

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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:

*Are the oyster sanctuaries delineated here described in a map? If so, would it be possible to provide a convenience copy for the Commission's review?*

Yes, a copy of the corresponding maps has been provided.

These static maps are for the five oyster sanctuaries corresponding with the substantive proposed amendments to 15A NCAC 03R .0117. Since these changes are currently in effect via the Fisheries Director's proclamation authority, the maps reflect the changes to be added to permanent rule:

- Subparagraph (1)(c), Pea Island;
- Subparagraph (1)(f), Gull Shoal;
- Subparagraph (1)(j), Swan Island;
- Subparagraph (1)(k), Raccoon Island; and
- Subparagraph (1)(l), Cedar Island.

This rule contains additional proposed amendments to make conforming changes to three oyster sanctuaries to standardize the cardinal directions, for consistency; there are no changes to the overall sanctuary nor the coordinate pairs themselves. Thus, there are no static maps provided for Long Shoal (Subparagraph (1)(d)), West Bluff (Subparagraph (1)(h)), or Little Creek (Subparagraph (2)(a)). All the Division of Marine Fisheries artificial reefs and oyster sanctuaries, including those set out in 15A NCAC 03R .0117, are also available via the Division's interactive map application at <https://www.deq.nc.gov/about/divisions/marine-fisheries/public-information-and-education/coastal-fishing-information/artificial-reefs/interactive-reef-guide>.

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0302

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

***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 (e), line 15, are the contents or substantive requirements of the forms mentioned here described in another rule or statute?*

[A list of the required items has been added to the rule.](#)

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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0901

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

***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 (5), what is "predictable intermittent pollution"? Who makes the prediction? Also, how often does pollution have to occur to be classified as "intermittent"?*

Conditionally approved areas are areas that are largely suitable for shellfish growing but are subject to predictable intermittent pollution that, at times, causes water quality to fall below acceptable levels. Predictable intermittent pollution is pollution that can be anticipated under particular environmental conditions such as rainfall, temperature, or seasonal weather patterns, based upon previous observations or studies by the DMF. For areas classified as conditionally approved, the DMF must develop a conditional area management plan. The management plan is area-specific and includes "known" and "predictable" factors affecting water quality. An example is a growing area that temporarily does not meet approved standards after a certain threshold of rainfall (due to runoff, sedimentation, etc., from the rainfall into the growing area). If the conditions to establish when an area meets approved standards are not known or predictable, then it would not be possible to develop the required management plan for that area and the area would need to remain closed.

"Intermittent" pollution is not continuous but occurs more often than historic weather events like hurricanes or 100-year flood events. The pollution occurs as a foreseeable result of common, periodic and expected environmental factors like significant rainfall events, seasonal temperature shifts, or particular tide and wind conditions.

*In 10, line 31, please replace the parentheses with commas.*

Completed

*In (14), p.2, line 3, please change "federal/state" to "federal and state". Also, capitalize "state" if referring only to the State of North Carolina.*

The incidence of "federal/state" has been changed to "federal and state". In this usage, "state" refers to all participating states, not just North Carolina.

Brian Liebman  
Commission Counsel

Date submitted to agency: July 3, 2024



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: July 3, 2024

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

AGENCY: N.C. Marine Fisheries Commission

RULE CITATION: 15A NCAC 18A .0906

**DEADLINE FOR RECEIPT: THURSDAY, JULY 18, 2024.**

***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 (a), line 4, did you mean "shall" instead of "may"? If not, what other factors are considered in classifying waters as restricted? The use of "may" indicates that the Division may not classify the waters as restricted even if the two factors listed here are met.*

The use of "may" is intended. Factors include whether there is an available shellfish resource in a certain area or not (if there is not a resource there, there is no need to classify it as restricted), and if staff capacity exists to do some extra work in order to classify the area as restricted (versus prohibited). For example, the DMF must add extra sampling stations in restricted waters that are not required in prohibited waters.

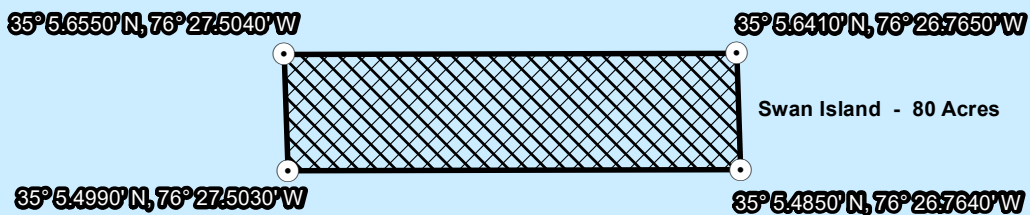
*In (a)(1), line 5, what is a "significant" point source of pollution?*


The text has been clarified.

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: July 3, 2024

Maps are provided for illustrative purposes to assist the public.  
Maps do not supersede existing rules or proclamations.



 Oyster Sanctuary



Map Datum: NAD83  
Map Projection: NC State Plane  
Map Date: Oct 2022

0 0.175 0.35  
Miles

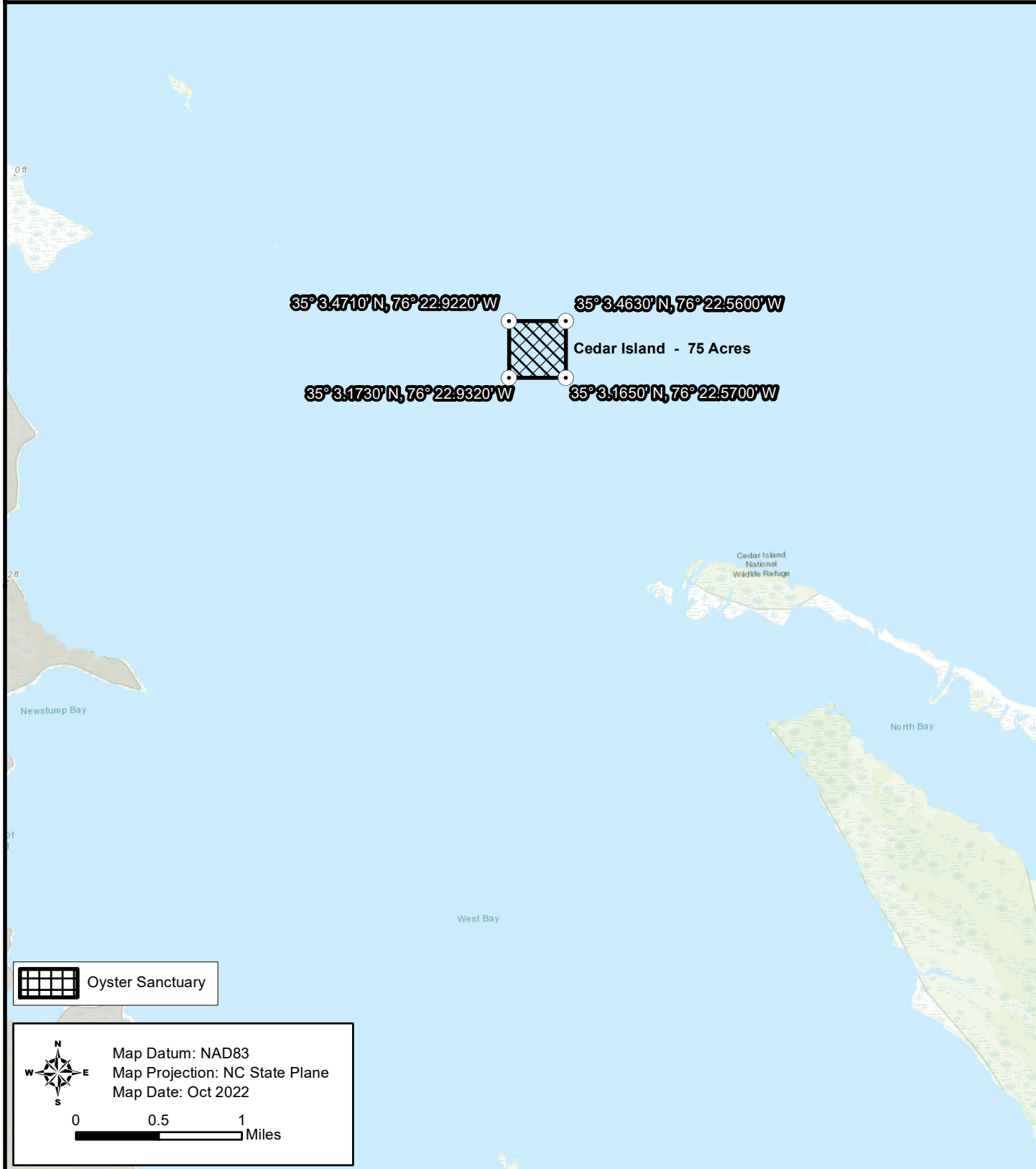


## PROCLAMATION SF-6-2022

Map 1



Maps are provided for illustrative purposes to assist the public.  
Maps do not supersede existing rules or proclamations.

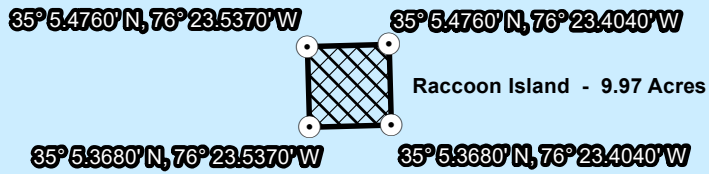


PROCLAMATION  
SF-6-2022

Map 2



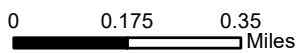
Maps are provided for illustrative purposes to assist the public.  
Maps do not supersede existing rules or proclamations.



 Oyster Sanctuary



Map Datum: NAD83  
Map Projection: NC State Plane  
Map Date: Oct 2022

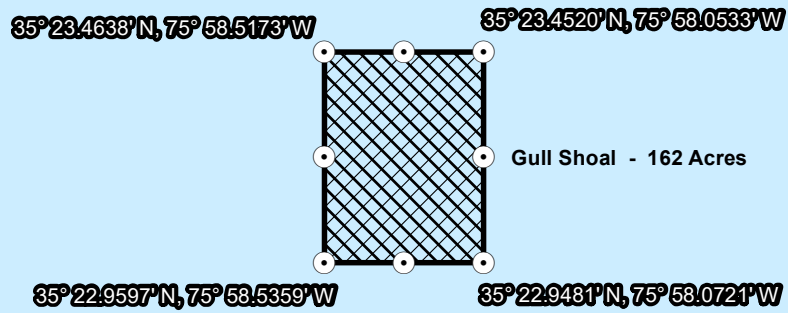



PROCLAMATION  
SF-6-2022

Map 3



Maps are provided for illustrative purposes to assist the public.  
Maps do not supersede existing rules or proclamations.



 Oyster Sanctuary



Map Datum: NAD83  
Map Projection: NC State Plane  
Map Date: Oct 2022

0 0.325 0.65  
Miles

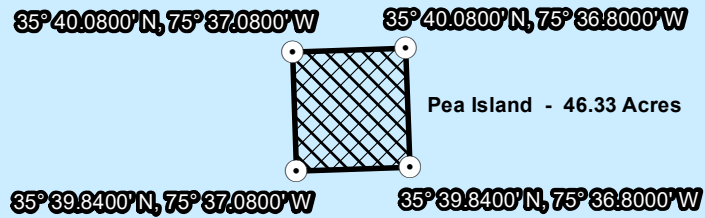



PROCLAMATION  
SF-6-2022

Map 4



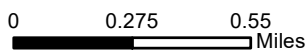
Maps are provided for illustrative purposes to assist the public.  
Maps do not supersede existing rules or proclamations.



 Oyster Sanctuary



Map Datum: NAD83  
Map Projection: NC State Plane  
Map Date: Oct 2022



## PROCLAMATION SF-6-2022

Map 5



1 15A NCAC 03I .0101 is amended with changes as published in 38:03 NCR 107-113 as follows:

2  
3 **SUBCHAPTER 03I – GENERAL RULES**

4  
5 **SECTION .0100 – GENERAL RULES**

6  
7 **15A NCAC 03I .0101 DEFINITIONS**

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

9 (1) enforcement and management terms:

- 10 (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial  
11 fishing operations.
- 12 (b) "Educational institution" means a college, university, or community college accredited by  
13 an accrediting agency recognized by the U.S. Department of Education; an Environmental  
14 Education Center certified by the N.C. Department of Environmental Quality Office of  
15 Environmental Education and Public Affairs; or a zoo or aquarium certified by the  
16 Association of Zoos and Aquariums.
- 17 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except  
18 the Atlantic Ocean.
- 19 (d) length of finfish:
- 20 (i) "Curved fork length" means a length determined by measuring along a line tracing  
21 the contour of the body from the tip of the upper jaw to the middle of the fork in  
22 the caudal (tail) fin.
- 23 (ii) "Fork length" means a length determined by measuring along a straight line the  
24 distance from the tip of the snout with the mouth closed to the middle of the fork  
25 in the caudal (tail) fin, except that fork length for billfish is measured from the tip  
26 of the lower jaw to the middle of the fork of the caudal (tail) fin.
- 27 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal  
28 insertion of the pectoral fin to the fork of the tail measured along the contour of  
29 the body in a line that runs along the top of the pectoral fin and the top of the  
30 caudal keel.
- 31 (iv) "Total length" means a length determined by measuring along a straight line the  
32 distance from the tip of the snout with the mouth closed to the tip of the  
33 compressed caudal (tail) fin.
- 34 (e) "Nongovernmental conservation organization" means an organization whose primary  
35 mission is the conservation of natural resources.
- 36 (f) "Polluted" means any shellfish growing waters as defined in 15A NCAC 18A .0901:



- 1 (i) that are contaminated with fecal material, pathogenic microorganisms, poisonous  
2 or deleterious substances, or marine biotoxins that render the consumption of  
3 shellfish from those growing waters ~~hazardous;hazardous~~. This may include  
4 ~~poisonous or deleterious substances as listed in the latest approved edition of the~~  
5 ~~National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan~~  
6 ~~Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action~~  
7 ~~Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances~~  
8 ~~in Seafood, which is incorporated by reference, including subsequent amendments~~  
9 ~~and editions. A copy of the reference material can be found at~~  
10 ~~[https://www.fda.gov/food/federalstate-food-programs/national-shellfish-  
12 sanitation-program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-<br/>11 sanitation-program-nssp), at no cost;~~
- 12 (ii) that have been determined through a sanitary survey as defined in 15A NCAC  
13 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source  
14 outfall ~~with public health significance;that may contaminate shellfish and cause a~~  
15 ~~food safety hazard as defined in 15A NCAC 18A .0301;~~
- 16 (iii) that have been determined through a sanitary survey as defined in 15A NCAC  
17 18A .0901 to be in or adjacent to a marina;
- 18 (iv) that have been determined through a sanitary survey as defined in 15A NCAC  
19 18A .0901 to be impacted by other potential sources of pollution that render the  
20 consumption of shellfish from those growing waters ~~hazardous;hazardous, such~~  
21 ~~as a wastewater treatment facility that does not contaminate a shellfish area when~~  
22 ~~it is operating normally but will contaminate a shellfish area and shellfish in that~~  
23 ~~area when a malfunction occurs;~~ or
- 24 (v) where the Division of Marine Fisheries is unable to complete the monitoring  
25 necessary to determine the presence of contamination or potential pollution  
26 sources.
- 27 (g) "Recreational possession limit" means restrictions on size, quantity, season, time period,  
28 area, means, and methods where take or possession is for a recreational purpose.
- 29 (h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational  
30 purpose.
- 31 (i) "Regular closed oyster season" means March 31 through October 15, unless amended by  
32 the Fisheries Director through proclamation authority.
- 33 (j) "Scientific institution" means one of the following entities:
- 34 (i) an educational institution as defined in this Item;
- 35 (ii) a state or federal agency charged with the management of marine or estuarine  
36 resources; or

1 (iii) a professional organization or secondary school working under the direction of,  
2 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)  
3 of this Item.

4 (2) fishing activities:

5 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of  
6 marine or estuarine resources, or other non-native species that may thrive if introduced into  
7 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of  
8 rearing on private bottom (with or without the superadjacent water column) or in a  
9 controlled environment. A controlled environment provides and maintains throughout the  
10 rearing process one or more of the following:

- 11 (i) food;
- 12 (ii) predator protection;
- 13 (iii) salinity;
- 14 (iv) temperature controls; or
- 15 (v) water circulation, utilizing technology not found in the natural environment.

16 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available  
17 to work the gear and be within 100 yards of any gear in use by that person at all times.  
18 Attended does not include being in a building or structure.

19 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former  
20 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a  
21 controlled environment. A controlled environment provides and maintains throughout the  
22 shedding process one or more of the following:

- 23 (i) food;
- 24 (ii) predator protection;
- 25 (iii) salinity;
- 26 (iv) temperature controls; or
- 27 (v) water circulation, utilizing technology not found in the natural environment. A  
28 shedding operation does not include transporting pink or red-line peeler crabs to  
29 a permitted shedding operation.

30 (d) ~~"Depuration" means mechanical purification or the removal of adulteration from live~~  
31 ~~oysters, clams, or mussels by any artificially controlled means.~~ "Depurate" or "deputation"  
32 has the same meaning as defined in the NSSP Guide for the Control of Molluscan Shellfish,  
33 Section I: Purpose and Definitions. This definition is incorporated by reference, not  
34 including subsequent amendments and editions. A copy of the reference material can be  
35 found at [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)  
36 sanitation-program-nssp, at no cost.

37 (e) "Long haul operation" means fishing a seine towed between two vessels.

- 1 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and  
 2 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 3 (g) "Possess" means any actual or constructive holding whether under claim of ownership or  
 4 not.
- 5 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation  
 6 as defined in G.S. 113-168.
- 7 ~~(i) "Shellfish marketing from leases and franchises" means the harvest of oysters, clams,  
 8 scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish  
 9 to the public at large or to a licensed shellfish dealer.~~
- 10 ~~(j) "Shellfish planting effort on leases and franchises" means the process of obtaining  
 11 authorized cultch materials, seed shellfish, and shellfish stocks from polluted waters and  
 12 the placement of those materials on privately held shellfish bottoms for increased shellfish  
 13 production.~~
- 14 (k) "Shellfish production on leases and franchises" means:
- 15 (i) ~~the culture of oysters, clams, scallops, or mussels on shellfish leases and  
 16 franchises from a sublegal harvest size to a marketable size.~~
- 17 (ii) ~~the transplanting (relay) of oysters, clams, scallops, or mussels from areas closed  
 18 due to pollution to shellfish leases and franchises in open waters and the natural  
 19 cleansing of those shellfish.~~
- 20 ~~(l)(i)~~ "Swipe net operations" means fishing a seine towed by one vessel.
- 21 ~~(m)(j)~~ "Transport" means to ship, carry, or cause to be carried or moved by public or private  
 22 carrier by land, sea, or air.
- 23 ~~(n)(k)~~ "Use" means to employ, set, operate, or permit to be operated or employed.
- 24 (3) gear:
- 25 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed  
 26 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch  
 27 is dipped or bailed.
- 28 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom  
 29 at both ends or with one end anchored or attached to the bottom and the other end attached  
 30 to a vessel.
- 31 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal  
 32 Fishing Waters except:
- 33 (i) cast nets;
- 34 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension  
 35 no larger than 18 inches and that by design is collapsed at all times when in the  
 36 water, except when it is being retrieved from or lowered to the bottom;

- 1 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop  
2 or frame to which the net is attached not exceeding 60 inches along the perimeter;  
3 (iv) gigs or other pointed implements that are propelled by hand, whether or not the  
4 implement remains in the hand;  
5 (v) hand operated rakes no more than 12 inches wide and weighing no more than six  
6 pounds and hand operated tongs;  
7 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-  
8 bait trotline;  
9 (vii) landing nets used to assist in taking fish when the initial and primary method of  
10 taking is by the use of hook and line;  
11 (viii) minnow traps when no more than two are in use;  
12 (ix) seines less than 30 feet in length;  
13 (x) spears, Hawaiian slings, or similar devices that propel pointed implements by  
14 mechanical means, including elastic tubing or bands, pressurized gas, or similar  
15 means.
- 16 (d) "Corkline" means the support structure a net is attached to that is nearest to the water  
17 surface when in use. Corkline length is measured from the outer most mesh knot at one end  
18 of the corkline following along the line to the outer most mesh knot at the opposite end of  
19 the corkline.
- 20 (e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth  
21 bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- 22 (f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure  
23 attached to the bottom, at both ends of the net.
- 24 (g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or  
25 frames, with one or more lead or leaders that guide fish to the net mouth. The net has one  
26 or more internal funnel-shaped openings with tapered ends directed inward from the mouth,  
27 through which fish enter the enclosure. The portion of the net designed to hold or trap fish  
28 is completely enclosed in mesh or webbing, except for the openings for fish passage into  
29 or out of the net (funnel area).
- 30 (h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills  
31 in its mesh as a result of net design, construction, mesh length, webbing diameter, or  
32 method in which it is used.
- 33 (i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest  
34 to the water surface when in use. Headrope length is measured from the outer most mesh  
35 knot at one end of the headrope following along the line to the outer most mesh knot at the  
36 opposite end of the headrope.

- 1 (j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or  
2 frames. The net has one or more internal funnel-shaped openings with tapered ends directed  
3 inward from the mouth, through which fish enter the enclosure. The portion of the net  
4 designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the  
5 openings for fish passage into or out of the net (funnel area).
- 6 (k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic,  
7 wire, or similar material set vertically in the water and held in place by stakes or anchors  
8 to guide fish into an enclosure. Lead length is measured from the outer most end of the lead  
9 along the top or bottom line, whichever is longer, to the opposite end of the lead.
- 10 (l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes,  
11 and other rakes when towed by engine power, patent tongs, kicking with propellers or  
12 deflector plates with or without trawls, and any other method that utilizes mechanical  
13 means to harvest clams.
- 14 (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other  
15 rakes when towed by engine power, and any other method that utilizes mechanical means  
16 to harvest oysters.
- 17 (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite  
18 knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- 19 (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead  
20 or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and  
21 lead(s) are not conical, nor are they supported by hoops or frames.
- 22 (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use  
23 of a purse line through rings located along the top or bottom line or elsewhere on such net.
- 24 (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish  
25 by encirclement and confining fish within itself or against another net, the shore or bank  
26 as a result of net design, construction, mesh length, webbing diameter, or method in which  
27 it is used.
- 28 (4) "Fish habitat areas" means the estuarine and marine areas that support juvenile and adult populations  
29 of fish ~~species, species throughout their entire life cycle, including early growth and development,~~  
30 as well as forage species utilized in the food chain. ~~Fish habitats as used in this definition, are vital~~  
31 ~~for portions of the entire life cycle, including the early growth and development of fish species.~~ Fish  
32 habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling,  
33 include:
- 34 (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems  
35 utilized by post-larval and later juvenile anadromous fish.

- 1 (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of  
2 anadromous fish has been documented in Division sampling records through direct  
3 observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- 4 (c) "Coral" means:  
5 (i) fire corals and hydrocorals (Class Hydrozoa);  
6 (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or  
7 (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which  
8 include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.),  
9 and sea pansies (*Renilla* sp.).
- 10 (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and  
11 live oysters of varying density.
- 12 (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard  
13 substrate, excluding mollusk shells, but including dead coral or rock. Living marine  
14 organisms associated with hard bottoms, banks, reefs, and live rock include:  
15 (i) Coralline algae (Division Rhodophyta);  
16 (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.),  
17 green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);  
18 (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);  
19 (iv) sponges (Phylum Porifera);  
20 (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class  
21 Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, *Solengastrea*  
22 (Class Anthozoa);  
23 (vi) Bryozoans (Phylum Bryozoa);  
24 (vii) tube worms (Phylum Annelida), fan worms (*Sabellidae*), feather duster and  
25 Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);  
26 (viii) mussel banks (Phylum Mollusca: Gastropoda); and  
27 (ix) acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- 28 (f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity,  
29 temperature, and other factors, young finfish and crustaceans spend the major portion of  
30 their initial growing season. Primary nursery areas are those areas in the estuarine system  
31 where initial post-larval development takes place. These are areas where populations are  
32 uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system  
33 where later juvenile development takes place. Populations are composed of developing  
34 sub-adults of similar size that have migrated from an upstream primary nursery area to the  
35 secondary nursery area located in the middle portion of the estuarine system.
- 36 (g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams,  
37 oysters, scallops, mussels, and whelks use to reproduce and survive because of such

1 favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those  
2 shellfish producing areas closed to shellfish harvest due to pollution.

3 (h) "Strategic Habitat Areas" means locations of individual fish habitats or systems of habitats  
4 that provide exceptional habitat functions or that are particularly at risk due to imminent  
5 threats, vulnerability, or rarity.

6 (i) "Submerged aquatic vegetation (SAV) habitat" means submerged lands that:

7 (i) are vegetated with one or more species of submerged aquatic vegetation including  
8 bushy pondweed or southern naiad (*Najas guadalupensis*), coontail  
9 (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed  
10 (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton*  
11 *perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton*  
12 *pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton*  
13 *pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche*  
14 *heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and  
15 wild celery (*Vallisneria americana*). These areas may be identified by the presence  
16 of above-ground leaves, below-ground rhizomes, or reproductive structures  
17 associated with one or more SAV species and include the sediment within these  
18 areas; or

19 (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i)  
20 of this Rule within the past 10 annual growing seasons and that meet the average  
21 physical requirements of water ~~depth (six feet or less), depth, which is six feet or~~  
22 ~~less, average light availability (secchi depth of one foot or more), availability,~~  
23 ~~which is a secchi depth of one foot or more,~~ and limited wave exposure that  
24 characterize the environment suitable for growth of SAV. The past presence of  
25 SAV may be demonstrated by aerial photography, SAV survey, map, or other  
26 documentation. An extension of the past 10 annual growing seasons criteria may  
27 be considered when average environmental conditions are altered by drought,  
28 rainfall, or storm force winds.

29 This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches  
30 or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission  
31 recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not  
32 intend the submerged aquatic vegetation definition, ~~or of~~ this Rule or 15A NCAC 03K  
33 .0304 and .0404, to apply to or conflict with the non-development control activities  
34 authorized by that Act.

35 (5) licenses, permits, leases and franchises, and record keeping:

36 (a) "Assignment" means temporary transferal to another person of privileges under a license  
37 for which assignment is permitted. The person assigning the license delegates the privileges

1 permitted under the license to be exercised by the assignee, but retains the power to revoke  
2 the assignment at any time, and is still the responsible party for the license.

3 (b) "Designee" means any person who is under the direct control of the permittee or who is  
4 employed by or under contract to the permittee for the purposes authorized by the permit.

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

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

8 (e) "Holder" means a person who has been lawfully issued in the person's name a license,  
9 permit, franchise, lease, or assignment.

10 (f) "Land" means:

11 (i) for commercial fishing operations, when fish reach the shore or a structure  
12 connected to the shore.

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

16 (iii) for recreational fishing operations, when fish are retained in possession by the  
17 fisherman.

18 (g) "Licensee" means any person holding a valid license from the Department to take or deal  
19 in marine fisheries ~~resources~~resources, except as otherwise defined in 15A NCAC 03O  
20 .0109.

21 (h) "Logbook" means paper forms provided by the Division and electronic data files generated  
22 from software provided by the Division for the reporting of fisheries statistics by persons  
23 engaged in commercial or recreational fishing or for-hire operators.

24 (i) "Master" means captain or operator of a vessel or one who commands and has control,  
25 authority, or power over a vessel.

26 (j) "New fish dealer" means any fish dealer making application for a fish dealer license who  
27 did not possess a valid dealer license for the previous license year in that name. For  
28 purposes of license issuance, adding new categories to an existing fish dealers license does  
29 not constitute a new dealer.

30 (k) "Office of the Division" means physical locations of the Division conducting license and  
31 permit transactions in Wilmington, Morehead City, Washington, Morehead City, Roanoke  
32 Island, and Elizabeth City, and Roanoke Island, North Carolina. Other businesses or  
33 entities designated by the Secretary to issue Recreational Commercial Gear Licenses or  
34 Coastal Recreational Fishing Licenses are not considered Offices of the Division.

35 (l) "Responsible party" means the person who coordinates, supervises, or otherwise directs  
36 operations of a business entity, such as a corporate officer or executive level supervisor of



1 business operations, and the person responsible for use of the issued license in compliance  
2 with applicable statutes and rules.

3 (m) "Tournament organizer" means the person who coordinates, supervises, or otherwise  
4 directs a recreational fishing tournament and is the holder of the Recreational Fishing  
5 Tournament License.

6 (n) "Transaction" means an act of doing business such that fish are sold, offered for sale,  
7 exchanged, bartered, distributed, or landed.

8 (o) "Transfer" means permanent transferal to another person of privileges under a license for  
9 which transfer is permitted. The person transferring the license retains no rights or interest  
10 under the license transferred.

11 (p) "Trip ticket" means paper forms provided by the Division and electronic data files  
12 generated from software provided by the Division for the reporting of fisheries statistics  
13 by licensed fish dealers.

14  
15 *History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;*  
16 *Eff. January 1, 1991;*  
17 *Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;*  
18 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*  
19 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*  
20 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*  
21 *Amended Eff. August 1, 2000;*  
22 *Temporary Amendment Eff. August 1, 2000;*  
23 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*  
24 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*  
25 *Readopted Eff. June 1, ~~2022~~, 2022;*  
26 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0201).*

1 15A NCAC 03I .0113 is amended with changes as published in 38:03 NCR 113 as follows:

2  
3 **15A NCAC 03I .0113 BIOLOGICAL SAMPLING DATA COLLECTION**

4 (a) For the purpose of this ~~Rule,~~ Rule:

5 (1) "refuse to allow" as used in Paragraphs (b) and (c) of this Rule shall mean to oppose, impede,  
6 intimidate, interfere, tamper, prohibit, or bar by command, impediment, threat, coercion,  
7 interference, or refusal of reasonable assistance, the Fisheries Director or the Fisheries Director's  
8 agents from collecting data as set forth in Paragraphs (b) and (c) of this Rule; and

9 (2) "responsible person" shall mean any licensee or person engaged in regulated activity under Chapter  
10 113, Subchapter IV, of the General Statutes.

11 ~~(b) It shall be unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes responsible person~~  
12 ~~to refuse to allow the Fisheries Director or the Fisheries Director's agents to obtain biological data, harvest information,~~  
13 ~~or other statistical data necessary or useful to the conservation and management of marine and estuarine resources~~  
14 ~~from for the taking of fish in the licensee's possession, by the responsible person. Such data shall include, but is not~~  
15 ~~limited to, may include:~~

- 16 (1) ~~species identification,~~ identification;  
17 (2) ~~species length,~~ length;  
18 (3) ~~species weight,~~ weight;  
19 (4) ~~species age,~~ age;  
20 (5) ~~species sex,~~ sex;  
21 (6) ~~number,~~ number of species;  
22 (7) quantity of catch;  
23 (8) ~~area of catch,~~ catch;  
24 (9) ~~harvest method, and of quantity catch,~~ method;  
25 (10) gear and gear specifications;  
26 (11) target species;  
27 (12) number of hours and days the responsible person spent fishing;  
28 (13) state, county, and zip code of responsible person;  
29 (14) number of individuals fishing with responsible person; and  
30 (15) social and economic data, including fishing ~~expenditures,~~ expenditures and durable goods.

31 ~~(c) It shall be unlawful for any responsible person to refuse to allow the Fisheries Director or the Fisheries Director's~~  
32 ~~agents to obtain data for the protection of public health related to the public health programs that fall under the~~  
33 ~~authority of the Marine Fisheries Commission.~~

34 ~~[(d) It shall be unlawful for any responsible person to harass the Fisheries Director or the Fisheries Director's agents~~  
35 ~~in any way related to the requirements of Paragraphs (b) and (c) of this Rule, including verbal or physical harassment~~  
36 ~~or sexual harassment. For the purpose of this Rule, "harassment" shall be defined consistent with 50 CFR 600.725(e),~~  
37 ~~(t), and (u), including to:~~

- 1 ~~(1) harass;~~
- 2 ~~(2) sexually harass, including making sexual connotations;~~
- 3 ~~(3) oppose;~~
- 4 ~~(4) impede;~~
- 5 ~~(5) intimidate;~~
- 6 ~~(6) interfere;~~
- 7 ~~(7) prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable~~
- 8 ~~assistance, the Fisheries Director or the Fisheries Director's agents from conducting his or her duties;~~
- 9 ~~or~~
- 10 ~~(8) tamper with or destroy samples or equipment;~~

11 50 CFR 600.725(e), (t), and (u), is incorporated by reference except as provided in Paragraph (e) of this Rule, including  
12 subsequent amendments and editions. A copy of the reference material can be found at  
13 <https://www.ecfr.gov/current/title-50/chapter-VI/part-600/subpart-H/section-600.725>, at no cost.]

14 [(e) Exceptions to 50 CFR 600.725(t) include "assault".]

15  
16 *History Note:* Authority G.S. 113-134; 113-135; 113-170.3; 113-174.1; 113-181; 113-182; 113-221.2; 113-  
17 221.3; 143B-289.52;  
18 *Eff. October 1, 1992;*  
19 *Recodified from 15A NCAC 31 .0013 Eff. December 17, 1996;*  
20 *Readopted Eff. March 15, ~~2023~~ 2023;*  
21 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0101 is amended with changes as published in 38:03 NCR 113-114 as follows:

2  
3 **SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS, AND MUSSELS**

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

6  
7 **15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS**

8 (a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as  
9 polluted by proclamation by the Fisheries Director ~~except as provided in Rules .0103, .0104, .0107, and .0401 of this~~  
10 ~~Subchapter.~~ except in accordance with:

- 11 (1) a Depuration Permit as set forth in Rule .0107 of this Section;  
12 (2) an Aquaculture Seed Transplant ~~Permit;~~ Permit as set forth in G.S. 113-203; or  
13 (3) a Shellfish Relocation Permit. The Fisheries Director may, by proclamation, designate sites for  
14 relocation where shellfish would otherwise be destroyed due to maintenance dredging, construction,  
15 or other development activities.

16 Individuals shall obtain an Aquaculture Seed Transplant Permit from the Secretary, or a Depuration Permit or a  
17 Shellfish Relocation Permit from the Fisheries Director setting forth the time, area, and method by which such shellfish  
18 may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

19 (b) The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest  
20 areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such  
21 closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900  
22 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of  
23 Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252-  
24 726-7021-252-515-5500; or at [https://www.deq.nc.gov/about/divisions/marine-fisheries/rules-proclamations-and-](https://www.deq.nc.gov/about/divisions/marine-fisheries/rules-proclamations-and-size-and-bag-limits/polluted-area-proclamations)  
25 [size-and-bag-limits/polluted-area-proclamations.](https://www.deq.nc.gov/about/divisions/marine-fisheries/rules-proclamations-and-size-and-bag-limits/polluted-area-proclamations)

26 ~~(b)(c)~~ (c) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels  
27 to protect the shellfish populations for management purposes or for protection of public health related to the public  
28 health programs that fall under the authority of the Marine Fisheries Commission not specified in ~~Paragraph (a)~~  
29 Paragraphs (a) or (b) of this Rule.

30 ~~(e)(d)~~ (d) It shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North  
31 Carolina, Carolina that have been deemed by the shellfish control authority where the shellfish were taken as  
32 unsuitable for the harvest of shellfish, except as provided in 15A NCAC 03I .0104.

33  
34 *History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-203; 113-221.1; 113-221.2;*  
35 *143B-289.52;*

36 *Eff. January 1, 1991;*

37 *Amended Eff. July 1, 1993;*

1                    *Temporary Amendment Eff. July 1, 1999;*  
2                    *Amended Eff. August 1, 2000;*  
3                    *Temporary Amendment Eff. October 1, 2001;*  
4                    *Amended Eff. October 1, 2008; April 1, 2003;*  
5                    *Readopted Eff. March 15, ~~2023~~, 2023;*  
6                    *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03K .0301 is amended with changes as published in 38:03 NCR 114-115 as follows:

2  
3 **SECTION .0300 - HARD CLAMS (MERCENARIA)**  
4

5 **15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS**

6 (a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing  
7 operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams  
8 (except Rangia or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section.  
9 Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately  
10 returned to the bottom from which they were taken. In determining whether the size and harvest limits have been  
11 exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any  
12 combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public  
13 bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.

14 (b) Size As set forth in Rule .0101 of this Subchapter, size and harvest limits established in Paragraph (a) of this Rule  
15 and the season and area limitations established in Rule .0302 of this Section may or may not apply for:

- 16 (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900  
17 and the North Carolina Hard Clam Fishery Management Plan; or  
18 (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the  
19 Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery  
20 Management Plan; or Plan.  
21 ~~(3) relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this~~  
22 ~~Subchapter.~~

23  
24 *History Note: Authority G.S. 113-134; 113-136; 113-137; 113-182; 113-221.2; 143B-289.52;*  
25 *Eff. January 1, 1991;*  
26 *Amended Eff. March 1, 1994;*  
27 *Readopted Eff. March 15, ~~2023~~, 2023;*  
28 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0101 is amended with changes as published in 38:03 NCR 115-117 as follows:

2  
3 **SUBCHAPTER 03O - LICENSES, LEASES, FRANCHISES, AND PERMITS**

4  
5 **SECTION .0100 - LICENSES**

6  
7 **15A NCAC 03O .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES,**  
8 **ENDORSEMENTS, AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

9 (a) Division of Marine Fisheries licenses are available at offices of the Division or by mail from the Morehead City  
10 Office of the Division, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available  
11 at from license agents of the Wildlife Resources Commission in accordance with G.S. 113-270.1.

12 (b) For the purpose purposes of this Rule, the procedures and requirements for the licensee shall also apply to the  
13 responsible party, the person holding power of attorney, the tournament organizer, and the vessel master.

14 (c) To obtain Division of Marine Fisheries licenses, endorsements, and Commercial Fishing Vessel Registrations, a  
15 licensee shall provide a completed application to an office of the Division by mail or in person. Applications submitted  
16 without complete and required information shall not be processed until all required information has been submitted.  
17 Incomplete applications shall be returned to the applicant within two business days with deficiency in the application  
18 so noted. The following shall be required for the application:

- 19 (1) full name, physical address, mailing address, date of birth, and signature of the licensee. If the  
20 licensee is not appearing before a license agent or a representative of the Division, the licensee's  
21 signature shall be notarized.
- 22 (2) a statement from the licensee that the information and supporting documentation submitted with the  
23 application is true and correct.
- 24 (3) current and valid picture identification of the licensee. Acceptable forms of picture identification  
25 are state driver's license, state identification card issued by the Division of Motor Vehicles, military  
26 identification card, resident alien card (green card), or passport; or if purchased by mail, a copy  
27 thereof.
- 28 (4) certification that the applicant does not have four or more marine or estuarine resource convictions  
29 for violation of any provision of Subchapter 113 of the North Carolina General Statutes under the  
30 authority of the Marine Fisheries Commission or any rule adopted by the Marine Fisheries  
31 Commission pursuant to Subchapter 113 during the previous three years.
- 32 (5) current articles of incorporation and a current list of corporate officers when purchasing a license or  
33 Commercial Fishing Vessel Registration in a corporate name. In the case of incorporation of an  
34 individual fishing vessel, the name of the vessel master shall also be specified. The licensee shall  
35 notify the Morehead City Office of the Division within five days of changing the vessel master.

1 (6) a current copy of a written partnership agreement shall be provided when purchasing a license,  
2 endorsement, or Commercial Fishing Vessel Registration in a partnership name, if a partnership is  
3 established.

4 (7) valid documentation papers or current motor boat registration, or copy thereof when purchasing a  
5 Commercial Fishing Vessel Registration. If an application for transfer of documentation is pending,  
6 a copy of the pending application and a notarized bill of sale may be submitted.

7 (8) affirmation of liability insurance and that the operator is knowledgeable of United States Coast  
8 Guard (USCG) safety requirements for the vessels used in the operation in accordance with G.S.  
9 113-168.6 when purchasing a Commercial Fishing Vessel Registration with a for-hire endorsement.

10 (d) In addition to the requirements of Paragraph (c) of this Rule, proof of residency for non-residents shall be  
11 documented by ~~the licensee with certification of the state of residency.~~ a notarized certification from the licensee  
12 stating the state where they are a resident. Proof of residency for residents of North Carolina shall be documented by  
13 the licensee as follows:

14 (1) Standard or Retired Standard Commercial Fishing Licenses: A notarized certification from the  
15 applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4)  
16 and:

17 (A) a notarized certification from the applicant that a North Carolina State Income Tax Return  
18 was filed for the previous calendar or tax year as a North Carolina resident;

19 (B) a notarized certification that the applicant was not required to file a North Carolina State  
20 Income Tax Return for the previous calendar or tax year; or

21 (C) military identification or military dependent identification, and permanent change of  
22 station orders or assignment orders substantiating the military individual's active duty  
23 assignment at a military facility in North Carolina.

24 (2) All other types of licenses:

25 (A) North Carolina voter registration card;

26 (B) current North Carolina Driver's License;

27 (C) current North Carolina Certificate of Domicile;

28 (D) current North Carolina Identification Card issued by the North Carolina Division of Motor  
29 Vehicles; or

30 (E) military identification or military dependent identification, and permanent change of  
31 station orders or assignment orders substantiating the military individual's active duty  
32 assignment at a military facility in North Carolina.

33 (e) In addition to the requirements in Paragraphs (c) and (d) of this Rule, the following shall be required:

34 (1) Blanket For-Hire Captain's CRFL: a valid certification from the USCG that allows carrying six or  
35 fewer passengers or a valid certification from the USCG that allows carrying more than six  
36 passengers.

37 (2) Blanket For-Hire Vessel CRFL or Non-Blanket For-Hire Vessel License:



- 1 (A) valid documentation papers or current motor boat registration, or copies thereof for the  
2 vessel engaged as for-hire; or  
3 (B) a copy of the pending application and a notarized bill of sale if an application for transfer  
4 of documentation is pending.  
5 (3) Fish Dealer License:  
6 (A) the physical address of the established location where business is conducted and, if  
7 different, the address where records are kept; and  
8 (B) a valid Permit and Certificate of Compliance from the Division of Marine Fisheries  
9 Shellfish Sanitation and Recreational Water Quality Section, if purchasing a Fish Dealer  
10 License with clam or oyster categories or a consolidated license.  
11 (4) Land or Sell License:  
12 (A) valid documentation papers or current motor boat registration, or copy thereof; or  
13 (B) a copy of the pending application and a notarized bill of sale if an application for transfer  
14 of documentation is pending.

15 The fees for a Land or Sell License shall be based on the vessel's homeport as it appears on the USCG documentation  
16 papers or the state in which the vessel is registered, in accordance with G.S. 113-169.5.

- 17 (5) Ocean Fishing Pier License:  
18 (A) the information required in G.S. 113-169.4; and  
19 (B) linear length of the pier. A Marine Fisheries inspector's signature is required to verify the  
20 linear length of the pier before the license can be issued.  
21 (6) Recreational Fishing Tournament License to Sell Fish: name and date or dates of the tournament.  
22 (7) Spotter Plane License:  
23 (A) the information required in G.S. 113-171.1;  
24 (B) the current aircraft registration; and  
25 (C) a list of operators.

26 (f) For a License to Land Flounder from the Atlantic Ocean, in addition to the requirements in Paragraphs (c) and (d)  
27 of this Rule, the following shall be applicable:

- 28 (1) for the purpose of this Paragraph, "license year" means the period beginning July 1 of a year through  
29 June 30 of the following year.  
30 (2) to qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:  
31 (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each  
32 year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license  
33 years for which the person had a vessel that was licensed to land in North Carolina;  
34 (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-  
35 94, or 1994-95 license years; and  
36 (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or  
37 Sell License.

1 (3) it shall be unlawful for a person to hold more Licenses to Land Flounder from the Atlantic Ocean  
2 than the number of vessels that the person owns that individually met the eligibility requirements of  
3 Parts (f)(2)(A) and (f)(2)(B) of this Rule.

4 (4) the License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel  
5 specified at the time of license issuance.

6 (5) at the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall  
7 specify the name of the vessel master for each License to Land Flounder from the Atlantic Ocean  
8 issued.

9 (6) the holder of the License to Land Flounder from the Atlantic Ocean shall notify the Morehead City  
10 Office of the Division of Marine Fisheries within five days of change as to the vessel master  
11 identified on the license.

12 (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year.

13 (g) For a Recreational Fishing Tournament License to Sell Fish, in addition to the requirements in Paragraphs (c) and  
14 (d) of this Rule, the following shall be applicable:

15 (1) it shall be unlawful for anyone other than the holder of the Recreational Fishing Tournament License  
16 to Sell Fish to sell fish taken during a recreational fishing tournament.

17 (2) fish to be sold under the Recreational Fishing Tournament License to Sell Fish shall be sold only to  
18 licensed fish dealers and shall comply with all applicable rules of the Marine Fisheries Commission  
19 or provisions of proclamations issued by the Fisheries Director as authorized by the Marine Fisheries  
20 Commission.

21 (3) it shall be unlawful for a licensed recreational fishing tournament organizer to fail to accurately and  
22 legibly complete a North Carolina Recreational Fishing Tournament Disposition of Proceeds from  
23 the Sale of Fish Form provided by the Division of Marine Fisheries and submit the form to the  
24 Division within 30 days after the last day of the tournament.

25 (h) It shall be unlawful for a license, endorsement, or Commercial Fishing Vessel Registration holder to fail to notify  
26 the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

27 (i) If requested by the Division, it shall be unlawful for a licensee to fail to participate in and provide accurate  
28 information for data collection in accordance with 15A NCAC 03I .0113 and for survey programs administered by  
29 the Division.

31 *History Note: Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169.2-5; 113-171.1; 113-174.3; 113-182;*  
32 *143B-289.52;*

33 *Eff. January 1, 1991;*

34 *Amended Eff. July 1, 1997; March 1, 1994;*

35 *Temporary Amendment Eff. July 1, 1999;*

36 *Amended Eff. August 1, 2000;*

37 *Temporary Amendment Eff. April 1, 2001;*

1 *Amended Eff. May 1, 2015; July 1, 2008; December 1, 2006; August 1, 2004; August 1, 2002;*  
2 *Readopted Eff. March 15, ~~2023~~, 2023;*  
3 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0109 is amended with changes as published in 38:03 NCR 117-118 as follows:

2  
3 **15A NCAC 03O .0109 ASSIGNMENT OF STANDARD COMMERCIAL FISHING LICENSE**

4 (a) For the purpose of this Rule, "licensee" shall mean the person issued a Standard Commercial Fishing License and  
5 "assignee" shall mean the individual to whom the licensee assigns a Standard Commercial Fishing License in  
6 accordance with the requirements of this Rule.

7 (b) If requested by the Division of Marine Fisheries, it shall be unlawful for a licensee or assignee to fail to participate  
8 in and provide accurate information for data collection in accordance with 15A NCAC 03I .0113 and for survey  
9 programs administered by the Division.

10 ~~(b)~~(c) The Division of Marine Fisheries shall provide assignment forms to the licensee upon request.

11 (d) The assignment form shall include the following information for the licensee:

- 12 (1) participant identification number;
- 13 (2) first, middle, and last name;
- 14 (3) business name, if applicable;
- 15 (4) Standard Commercial Fishing License number assigned;
- 16 (5) assignment start date;
- 17 (6) assignment termination date;
- 18 (7) signature;
- 19 (8) date licensee signed the form; and
- 20 (9) notarization of licensee's signature.

21 (e) The assignment form shall include the following information for the assignee:

- 22 (1) participant identification number;
- 23 (2) first, middle, and last name, and suffix, if applicable;
- 24 (3) one of the following:
  - 25 (A) driver's license number and expiration date;
  - 26 (B) state identification number and expiration date;
  - 27 (C) military identification number and expiration date;
  - 28 (D) resident alien identification number and expiration date; or
  - 29 (E) passport number and expiration date;
- 30 (4) date of birth;
- 31 (5) physical address of primary residence;
- 32 (6) physical address of secondary residence, if applicable;
- 33 (7) mailing address;
- 34 (8) e-mail address, if applicable;
- 35 (9) race;
- 36 (10) gender;
- 37 (11) height and weight;

- 1           (12)    eye color and hair color;
- 2           (13)    at least one of the following:
- 3                (A)    home phone number;
- 4                (B)    business phone number; or
- 5                (C)    cellular phone number;
- 6           (14)    fax number, if applicable;
- 7           (15)    signature;
- 8           (16)    date assignee signed the form; and
- 9           (17)    notarization of assignee's signature.

10 (f) Only Division assignment forms shall be used to obtain an assignment. On the assignment form, the licensee shall  
11 designate what, if any, endorsements are included in the assignment. Endorsements shall not be assigned independent  
12 of the Standard Commercial Fishing License. It shall be unlawful for the licensee or the assignee to fail to submit  
13 within five days the completed assignment form to any office of the Division in person or by mail to the Morehead  
14 City Office. The Morehead City Office is located at 3441 Arendell Street, Morehead City, North Carolina, 28557. If  
15 the completed assignment form is not received by the Division within five days from the date it was signed, the  
16 assignment shall be null and void. Incomplete forms shall be returned to the licensee with deficiency in the form so  
17 noted. An assignment is in effect from the date specified on the assignment form and when:

- 18           (1)    the assignment form is complete with all required information;
- 19           (2)    signatures of the current license holder and the assignee are notarized; and
- 20           (3)    the assignee has in the assignee's possession the current licensee's original actual Standard  
21                Commercial Fishing License, including applicable endorsements in accordance with G.S. 113-  
22                169.2.

23 ~~(e)~~(g) For an extension of time for assignments, a new assignment form shall be completed in accordance with  
24 Subparagraphs ~~(b)(1)-(f)(1)~~ through ~~(b)(3)-(f)(3)~~ of this Rule.

25 ~~(d)~~(h) Assignments shall terminate:

- 26           (1)    when the date specified on the assignment form is reached;
- 27           (2)    if the licensee or assignee are determined ineligible for a license or assignment;
- 28           (3)    if the Division receives a notarized statement from the current license holder stating a revised date  
29                for an earlier assignment termination;
- 30           (4)    upon the licensee or assignee's death; or
- 31           (5)    when the Standard Commercial Fishing License expires.

32 ~~(e)~~(i) It shall be unlawful for an individual assigned a Standard Commercial Fishing License when involved in a  
33 commercial fishing operation to fail to have the original actual Standard Commercial Fishing License, any assigned  
34 endorsements, and a copy of the assignment form in the individual's possession ready at hand for inspection in  
35 accordance with G.S. 113-168.1.

36 ~~(f)~~(j) All landings occurring during the time of the assignment shall be credited to the licensee, not the assignee.

1 (e)(h)(k) It shall be unlawful to be assigned more than a single Standard Commercial Fishing License at any one  
2 time. It shall be unlawful to assign a Standard Commercial Fishing License to more than one individual at any one  
3 time. Assignments shall only be made by the licensee and shall not be further assigned by assignees. Masters identified  
4 on the Standard Commercial Fishing Licenses of corporations consisting of an individual fishing vessel shall not  
5 assign such licenses.

6 (h)(i)(l) It shall be unlawful for a person to accept assignment of a Standard Commercial Fishing License for which  
7 they are ineligible.

8 (i)(j)(m) It shall be unlawful for any assignee of a Standard Commercial Fishing License not to return the assignment  
9 and the Standard Commercial Fishing License with any assigned endorsements to the licensee within five days of  
10 notice that the assignment has been terminated or a demand by the licensee to return the license.

11  
12 *History Note: Authority G.S. 113-134; 113-135; 113-168.1; 113-168.2; 113-168.5; 113-169.2; 113-182; 113-187;*  
13 *143B-289.52;*  
14 *Eff. January 1, 1991;*  
15 *Temporary Amendment Eff. October 2, 1999; July 1, 1999;*  
16 *Amended Eff. August 1, 2000;*  
17 *Readopted Eff. March 15, ~~2023~~, 2023;*  
18 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0501 is amended with changes as published in 38:03 NCR 120-121 as follows:

2  
3 **SECTION .0500 - PERMITS**

4  
5 **15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

6 (a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of  
7 attorney shall provide the following information:

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

32 **(6) additional information as required for specific permits.**

33 (b) A permittee shall hold a valid:

- 34 (1) Standard or Retired Standard Commercial Fishing License in order to hold:
- 35 (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
- 36 (B) a Permit for Weekend Trawling for Live Shrimp; or
- 37 (C) a Pound Net Set Permit.

1 The master designated on the single vessel corporation Standard Commercial Fishing License is the  
2 individual required to hold the Permit for Weekend Trawling for Live Shrimp.

3 (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries  
4 under a quota or allocation for that category.

5 (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall  
6 be eligible to hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.

7 (d) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or  
8 Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:

9 (1) Depuration Permit;

10 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~

11 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or~~

12 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish; or~~

13 ~~(5)(3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as~~  
14 provided in G.S. 113-169.2.

15 (e) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or  
16 Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a  
17 permittee to hold a:

18 (1) Depuration Permit; or

19 ~~(2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;~~

20 ~~(3)(2) Permit to Transplant Oysters from Seed Oyster Management Areas; or Areas.~~

21 ~~(4) Permit to Transplant Prohibited (Polluted) Shellfish.~~

22 (f) Aquaculture Operation Permit and Aquaculture Collection Permit:

23 (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold  
24 an Aquaculture Collection Permit.

25 (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for  
26 the species harvested and the gear used under the Aquaculture Collection Permit.

27 (g) Atlantic Ocean Striped Bass Commercial Gear Permit:

28 (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the  
29 following types of gear for an initial permit and at intervals of three consecutive license years  
30 thereafter:

31 (A) a gill net;

32 (B) a trawl net; or

33 (C) a beach seine.

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



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

4 (h) Applications submitted without complete and required information shall not be processed until all required  
5 information has been submitted. Incomplete applications shall be returned **within two business days** to the applicant  
6 with the deficiency in the application noted.

7 (i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her  
8 agreement to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K  
9 .0103, .0104, .0107, .0111, .0401, .0501 and .0505, 03K .0103 and .0107, Rule .0211 of this Subchapter, and Rules  
10 .0502 and .0503 of this Section, as applicable to the requested permit.

11 (j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate  
12 **factors such as the following:**~~the following factors:~~

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

15 (2) ~~the applicant's demonstration of a valid justification whether the permit application meets the~~  
16 **requirements** for the permit; and

17 (3) whether the applicant has a history of eight or more ~~fisheries~~ violations **of any provision of**  
18 **Subchapter 113 of the North Carolina General Statutes under the authority of the Marine Fisheries**  
19 **Commission or any rule adopted by the Marine Fisheries Commission pursuant to Subchapter 113**  
20 within 10 years.

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

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

29 (m) For permit renewals, the permittee's signature on the application shall certify all information is true and accurate.  
30 Notarized signatures on renewal applications shall not be required.

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

33 (o) It shall be unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee  
34 prior to use of the permit by that designee.

35 (p) Permit applications shall be available at all Division of Marine Fisheries offices.

36  
37 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*

1                    *Temporary Adoption Eff. September 1, 2000; May 1, 2000;*  
2                    *Eff. April 1, 2001;*  
3                    *Temporary Amendment Eff. October 1, 2001;*  
4                    *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1,*  
5                    *2007; September 1, 2005; April 1, 2003; August 1, 2002;*  
6                    *Readopted Eff. April 1, ~~2019-2019~~;*  
7                    *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 03O .0503 is amended with changes as published in 38:03 NCR 121-125 as follows:

2  
3 **15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC**

4 (a) Aquaculture Operation Permit and Aquaculture Collection Permit:

5 (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without  
6 first securing an Aquaculture Operation Permit from the Fisheries Director.

7 (2) It shall be unlawful:

8 (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture  
9 purposes without first obtaining an Aquaculture Collection Permit from the Fisheries  
10 Director;

11 (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine  
12 resources taken pursuant to an Aquaculture Collection Permit; or

13 (C) to fail to submit to the Fisheries Director an annual report, due on December 1 of each year  
14 on the form provided by the Division of Marine Fisheries, stating the amount and  
15 disposition of marine and estuarine resources collected under authority of an Aquaculture  
16 Collection Permit.

17 ~~(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall  
18 be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection  
19 Permit issued by the Fisheries Director.~~

20 ~~(4)~~(3) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on  
21 a calendar year basis.

22 ~~(5)~~(4) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to  
23 an Aquaculture Collection Permit at the time of application.

24 (b) Atlantic Ocean Striped Bass Commercial Gear Permit:

25 (1) It shall be unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation  
26 without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.

27 (2) It shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit  
28 during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired  
29 Standard Commercial Fishing licenses, or assignments.

30 (c) Blue Crab Shedding Permit: It shall be unlawful to possess more than 50 blue crabs in a shedding operation  
31 without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

32 (d) Coastal Recreational Fishing License Exemption Permit:

33 (1) It shall be unlawful for the responsible party seeking exemption from recreational fishing license  
34 requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal  
35 Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.

1 (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational  
2 fishing activity conducted solely for the participation and benefit of one of the following groups of  
3 eligible individuals:

4 (A) individuals with physical or mental impairment;

5 (B) members of the United States Armed Forces and their dependents, upon presentation of a  
6 valid military identification card;

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

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

11 For the purpose of this Paragraph, educational institutions include high schools and other secondary  
12 educational institutions.

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

16 (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the  
17 following, in addition to the information required in Rule .0501 of this Section, is submitted to the  
18 Fisheries Director, in writing, at least 30 days prior to the event:

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

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

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

23 (D) an estimate of the number of participants.

24 (e) Dealer permits for monitoring fisheries under a quota or allocation:

25 (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer  
26 permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a  
27 fish dealer issued such permit to fail to:

28 (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine  
29 Fisheries, the previous day's landings for the permitted fishery to the Division. The form  
30 shall include the dealer's name, dealer's license number, date the fish were landed,  
31 permittee's or designee's signature, date the permittee or designee signed the form, and  
32 species-specific information as listed in Parts (e)(2)(A), (e)(3)(A), (e)(4)(A), and (e)(5)(A)  
33 of this Rule. Landings for Fridays or Saturdays shall be submitted on the following

34 Monday. If the dealer is unable to fax or electronically mail the required information, the  
35 permittee shall call in the previous day's landings to the Division;

36 (B) submit the required form set forth in Part (e)(1)(A) of this Rule to the Division upon request  
37 or no later than five days after the close of the season for the fishery permitted;

- (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) contact the Division daily, regardless of whether a transaction for the fishery for which a dealer is permitted occurred; and
- (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Atlantic Ocean Flounder Dealer Permit:

(A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of Atlantic Ocean flounder shall include the permit number, number of vessels used for harvest, and the pounds harvested.

~~(A)~~(B) It shall be unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.

~~(B)~~(C) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(3) Black Sea Bass North of Cape Hatteras Dealer Permit:

(A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of black sea bass north of Cape Hatteras shall include the permit number, number of vessels used for harvest, and the pounds harvested.

(B) It shall be unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.

(4) Spiny Dogfish Dealer Permit:

(A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of spiny dogfish shall include the permit number, number of vessels used for harvest, and the pounds harvested.

(B) It shall be 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.

(5) Striped Bass Dealer Permit:

(A) In addition to the information required in Part (e)(1)(A) of this Rule, the form to record the previous day's landings of striped bass shall include the permit number, number of tags used by area, pounds harvested by area, and for the Atlantic Ocean, type of gear used for harvest.

1 ~~(A)~~(B) It shall be unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken  
2 from the following areas without first obtaining a Striped Bass Dealer Permit validated for  
3 the applicable harvest area:

- 4 (i) the Atlantic Ocean;
- 5 (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201;  
6 or
- 7 (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area  
8 as designated in 15A NCAC 03R .0201.

9 ~~(B)~~(C) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest  
10 areas opened by proclamation without having a valid Division of Marine Fisheries-issued  
11 tag for the applicable area affixed through the mouth and gill cover or, in the case of striped  
12 bass imported from other states, a similar tag that is issued for striped bass in the state of  
13 origin. Division striped bass tags shall not be bought, sold, offered for sale, or transferred.  
14 Tags shall be obtained at the Division offices. The Division shall specify the quantity of  
15 tags to be issued based on historical striped bass landings. It shall be unlawful for the  
16 permittee to fail to surrender unused tags to the Division upon request.

17 (f) Horseshoe Crab Biomedical Use Permit:

- 18 (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- 19 (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to  
20 fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries,  
21 due on February 1 of each year. Such reports shall be filed on forms provided by the Division and  
22 shall include a monthly account of the number of crabs harvested, a statement of percent mortality  
23 up to the point of release, the harvest method, the number or percent of males and females, and the  
24 disposition of bled crabs prior to release.
- 25 (3) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to  
26 fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management  
27 Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery  
28 Management Plan for Horseshoe Crab is incorporated by reference including subsequent  
29 amendments and editions. Copies of this plan are available via the Internet from the Atlantic States  
30 Marine Fisheries Commission at <http://www.asmfmc.org/fisheries-management/program-overview>  
31 and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC  
32 28557, at no cost.

33 (g) Permit for Weekend Trawling for Live Shrimp:

- 34 (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday  
35 without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- 36 (2) It shall be unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls  
37 from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.

1 (3) It shall be unlawful for a permit holder during the timeframe specified in Subparagraph ~~(4)(1)~~(g)(1)  
2 of this Rule to:

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

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

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

8 (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait  
9 tanks, with aerators or circulating water, with a minimum combined tank capacity of 50  
10 gallons; or

11 (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or  
12 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

13 (h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as  
14 set forth in 15A NCAC 03J .0505.

15 (i) Scientific or Educational Activity Permit:

16 (1) It shall be unlawful for institutions or agencies seeking exemptions from license, rule, proclamation,  
17 or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes  
18 any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.

19 (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and  
20 possession allowances approved by the Division of Marine Fisheries.

21 (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted  
22 by or under the direction of Scientific or Educational institutions as defined in 15A NCAC 03I .0101.

23 (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to  
24 fail to submit an annual report on collections and, if authorized, sales to the Division, due on  
25 December 1 of each year, unless otherwise specified on the permit. The reports shall be filed on  
26 forms provided by the Division. Scientific or Educational Activity permits shall be issued on a  
27 calendar year basis.

28 (5) It shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational  
29 Activity Permit without:

30 (A) the required license for such sale;

31 (B) an authorization stated on the permit for such sale; and

32 (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish  
33 dealer.

34 (6) It shall be unlawful to fail to provide the Division with a list of all designees acting under a Scientific  
35 or Educational Activity Permit at the time of application.

1 (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries  
2 Communications Center at 800-682-2632 or 252-726-7021 ~~not~~no later than 24 hours prior to use  
3 of the permit, specifying activities and location.

4 (j) Under Dock Oyster Culture Permit:

5 (1) It shall be unlawful to cultivate oysters in containers under docks for personal consumption without  
6 first obtaining an Under Dock Oyster Culture Permit.

7 (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth  
8 in G.S. 113-210(c).

9 (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct  
10 answers, based on an educational package provided by the Division of Marine Fisheries pursuant to  
11 G.S. 113-210(j), demonstrating the applicant's knowledge of:

12 (A) the application process;

13 (B) permit criteria;

14 (C) basic oyster biology and culture techniques;

15 (D) shellfish harvest area closures due to pollution;

16 (E) safe handling practices;

17 (F) permit conditions; and

18 (G) permit revocation criteria.

19 (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of  
20 the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

21  
22 *History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*  
23 *Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;*  
24 *Eff. April 1, 2001;*  
25 *Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1,*  
26 *2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002;*  
27 *Readopted Eff. April 1, ~~2019~~2019;*  
28 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*



1 15A NCAC 18A .0302 is amended with changes as published in 38:03 NCR 128-129 as follows:

2  
3 **15A NCAC 18A .0302 PERMITS**

4 (a) It shall be unlawful to operate any of the following facilities without first obtaining a Shellfish Dealer Permit  
5 and Certificate of Compliance from the Division of Marine Fisheries:

- 6 (1) depuration facilities;
- 7 (2) repacking plants;
- 8 (3) shellstock plants; and
- 9 (4) shucking and packing plants.

10 (b) It shall be unlawful to operate as a ~~shellstock~~-shellfish dealer without first obtaining a Shellfish Dealer Permit  
11 and Certificate of Compliance from the Division.

12 (c) It shall be unlawful to operate as a reshipper without first obtaining a Shellfish Dealer Permit and Certificate of  
13 Compliance from the Division if shellfish are purchased and shipped out of state.

14 (d) Approval for wet storage of shellstock shall be granted only to persons permitted pursuant to this Rule.

15 (e) Application for a permit shall be submitted in writing to the Division. Application forms may be obtained from  
16 the Division, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557. The application shall include the  
17 following information:

- 18 (1) permittee's full name;
- 19 (2) permittee's date of birth;
- 20 (3) facility or business name;
- 21 (4) physical address of facility;
- 22 (5) permittee's mailing address;
- 23 (6) season of facility operation;
- 24 (7) permittee's signature; and
- 25 (8) date permittee signed the form.

26 (f) No permit shall be issued by the Division until an inspection by the Division shows that the facility and  
27 equipment comply with all applicable Rules in Sections .0300 through .0800 of this Subchapter. The owner or  
28 responsible ~~person~~-individual shall sign the completed inspection sheet to acknowledge receipt of the inspection  
29 sheet.

30 (g) All permits shall be posted in a conspicuous place in the facility.

31 (h) All permits shall expire on April 30 of each year and are non-transferrable.

32 (i) Plans and specifications for proposed new construction, expansion of operations, or changes in operating  
33 processes shall be submitted to the Division for review and approval prior to beginning construction or making a  
34 change.

35 (j) A permit may be revoked or suspended in accordance with 15A NCAC 03O .0504.

36  
37 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*

1                   *Eff. February 1, 1987;*  
2                   *Amended Eff. April 1, 1997;*  
3                   *Readopted Eff. March 15, ~~2023~~, 2023;*  
4                   *Amended Eff. (Pending legislative review pursuant to S.L. 2019-198).*

1 15A NCAC 18A .0901 is amended with changes as published in 38:03 NCR 142-143 as follows:

2  
3 **SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS**

4  
5 **15A NCAC 18A .0901 DEFINITIONS**

6 The following definitions shall apply to this Section.

- 7 (1) "Approved" means shellfish growing waters determined suitable by the Division for the harvesting  
8 of shellfish for direct market purposes.
- 9 (2) "Closed-system marina" means a marina constructed in canals, basins, tributaries, or any other area  
10 with restricted tidal flow.
- 11 (3) "Colony forming unit" means an estimate of the number of viable bacteria cells in a sample as  
12 determined by a plate count.
- 13 (4) "Commercial marina" means a marina that offers one or more of the following services: fuel,  
14 transient dockage, haul-out facilities, or repair services.
- 15 (5) "Conditionally approved" means shellfish growing waters that are subject to predictable intermittent  
16 pollution but that may be used for harvesting shellfish for direct market purposes when management  
17 plan criteria are met.
- 18 (6) "Division" means the Division of Marine Fisheries or its authorized agent.
- 19 (7) "Estimated 90<sup>th</sup> percentile" means a statistic that measures the variability in a sample set that shall  
20 be calculated by:
- 21 (a) calculating the arithmetic mean and standard deviation of the sample result logarithms  
22 (base 10);
- 23 (b) multiplying the standard deviation in Sub-Item (a) of this Item by 1.28;
- 24 (c) adding the product from Sub-Item (b) of this Item to the arithmetic mean; and
- 25 (d) taking the antilog (base 10) of the results from Sub-Item (c) of this Item to determine the  
26 estimated 90<sup>th</sup> percentile.
- 27 (8) "Fecal coliform" means bacteria of the coliform group that will produce gas from lactose in a  
28 multiple tube procedure liquid medium (EC or A-1) within 24 plus or minus two hours at 44.5° C  
29 plus or minus 0.2° C in a water bath.
- 30 (9) "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm.
- 31 (10) "Marina" means any water area with a ~~structure (such structure, such~~ as a dock, basin, ~~or~~ floating  
32 ~~dock) dock,~~ that is utilized for docking or otherwise mooring vessels and constructed to provide  
33 temporary or permanent docking space for more than 10 boats.
- 34 (11) "Marine biotoxins" means any poisonous compound produced by marine microorganisms and  
35 accumulated by shellstock.
- 36 (12) "Median" means the middle number in a given sequence of numbers, taken as the average of the  
37 two middle numbers when the sequence has an even number of numbers.

- 1 (13) "Most probable number (MPN)" means a statistical estimate of the number of bacteria per unit  
2 volume and is determined from the number of positive results in a series of fermentation tubes.
- 3 (14) "National Shellfish Sanitation Program (NSSP)" means the federal and state cooperative federal-  
4 state industry program recognized by the U.S. Food and Drug Administration (FDA) and the  
5 Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish that is adequate  
6 to ensure that the shellfish produced in accordance with the NSSP Guide For The Control Of  
7 Molluscan Shellfish will be safe and sanitary produced and sold for human consumption.
- 8 (15) "Open-system marina" means a marina constructed in an area where tidal currents have not been  
9 impeded by natural or man-made barriers.
- 10 (16) "Private marina" means any marina that is not a commercial marina as defined in this Rule.
- 11 (17) "Prohibited" means shellfish growing waters unsuitable for the harvesting of shellfish for direct  
12 market purposes.
- 13 (18) "Public health emergency" means any condition that may immediately cause shellfish waters to be  
14 unsafe for the harvest of shellfish for human consumption.
- 15 (19) "Restricted" means shellfish growing waters from which shellfish may be harvested only by permit  
16 and are subjected to a treatment process through ~~relaying or~~ depuration that renders the shellfish  
17 safe for human consumption.
- 18 (20) "Sanitary survey" means the written evaluation of factors that affect the sanitary quality of a shellfish  
19 growing area including sources of pollution, the effects of wind, tides, and currents in the  
20 distribution and dilution of polluting materials, and the bacteriological quality of water.
- 21 (21) "Shellfish" means the term as defined in G.S. 113-129, except the term shall not include scallops  
22 when the final product is the shucked adductor muscle only.
- 23 (22) "Shellfish growing area" means a management unit that defines the boundaries of a sanitary survey  
24 and that is used to track the location where shellfish are harvested.
- 25 (23) "Shellfish growing waters" means marine or estuarine waters that support or could support shellfish  
26 life.
- 27 (24) "Shellstock" means live molluscan shellfish in the shell.
- 28 (25) "Shoreline survey" means an in-field inspection by the Division to identify and evaluate any  
29 potential or actual pollution sources or other environmental factors that may impact the sanitary  
30 quality of a shellfish growing area.
- 31 (26) "Systematic random sampling strategy" means a sampling strategy designed to assess the  
32 bacteriological water quality of shellfish growing waters impacted by non-point sources of pollution  
33 and scheduled sufficiently far in advance to support random collection with respect to environmental  
34 conditions.

35  
36 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*  
37 *Eff. June 1, 1989;*

1 *Amended Eff. August 1, 1998; February 1, 1997; September 1, 1990;*  
2 *Readopted Eff. May 1, ~~2021~~-2021;*  
3 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*

1 15A NCAC 18A .0906 is amended with changes as published in 38:03 NCR 143 as follows:

2

3 **15A NCAC 18A .0906 RESTRICTED AREAS**

4 (a) Shellfish growing waters may be classified as restricted if:

5 (1) a sanitary survey indicates there are no ~~significant point~~ sources of ~~pollution;~~ pollution that would  
6 cause fecal pollution, human pathogens, or poisonous or deleterious substances in shellstock to  
7 exceed levels that can be made safe for human consumption by either relaying or depuration; and

8 (2) levels of fecal pollution, human pathogens, or poisonous or deleterious substances are at such levels  
9 that shellstock can be made safe for human consumption by either relaying or depuration.

10 ~~(b) Relaying of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K and~~  
11 ~~15A NCAC 18A .0300.~~

12 ~~(b)~~ Depuration of shellfish shall be conducted in accordance with all applicable rules, including 15A NCAC 03K  
13 and 15A NCAC 18A .0300 and .0700.

14 ~~(c)~~ For shellfish growing waters classified as restricted and used as a source of shellstock for depuration, the  
15 microbiological survey, as set forth in Rule .0903(c)(3) of this Section, shall indicate the bacteriological water quality  
16 does not exceed the following standards based on results generated using the systematic random sampling strategy:

17 (1) a median fecal coliform most probable number (MPN) or geometric mean MPN of 88 per 100  
18 milliliters;

19 (2) a median fecal coliform colony-forming units (CFU) or geometric mean CFU of 88 per 100  
20 milliliters;

21 (3) an estimated 90<sup>th</sup> percentile of 260 MPN per 100 milliliters for a five-tube decimal dilution test; or

22 (4) an estimated 90<sup>th</sup> percentile of 163 CFU per 100 milliliters for a membrane filter membrane-  
23 Thermotolerant Escherichia coli (mTEC) test.

24

25 *History Note: Authority G.S. 113-134; 113-182; 113-221.2; 143B-289.52;*

26 *Eff. June 1, 1989;*

27 *Readopted Eff. May 1, 2021-2021;*

28 *Amended Eff. (Pending legislative review of 15A NCAC 03K .0104).*

## Burgos, Alexander N

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**From:** Everett, Jennifer  
**Sent:** Wednesday, July 3, 2024 1:11 PM  
**To:** Liebman, Brian R  
**Cc:** Blum, Catherine; Burgos, Alexander N  
**Subject:** RE: 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Thanks, we will be in touch!

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8595  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Wednesday, July 3, 2024 11:42 AM  
**To:** Everett, Jennifer <jennifer.everett@deq.nc.gov>  
**Cc:** Blum, Catherine <catherine.blum@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** 15 NCAC 03I, K, O, R, and 18A Requests for Changes - July 2024 RRC

Good morning,

I'm the attorney who reviewed the Rules submitted by the Marine Fisheries Commission for the July 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, July 31, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Thursday, July 18, 2024.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings

(984)236-1948

[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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