

Burgos, Alexander N

Subject: FW: MFC RFC

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, December 11, 2025 1:12 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Blum, Catherine <catherine.blum@deq.nc.gov>
Subject: RE: MFC RFC

Thank you much!

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://www.deq.nc.gov/accessdeq/rules-regulations>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Sent: Thursday, December 11, 2025 12:49 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Blum, Catherine <catherine.blum@deq.nc.gov>
Subject: RE: MFC RFC

Jennifer, it has been updated to reflect the correct rule.

Alexander Burgos
Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1940
Alexander.burgos@oah.nc.gov

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, December 11, 2025 12:46 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

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

Subject: RE: MFC RFC

Hi...Also, on the December 18 RRC meeting agenda, specifically the MFC permanent rules. The document linked for "[Request for Changes Pursuant to G.S. 150B-21.10](#)" has a mismatched rule included in it. The request from Seth is for 15A NCAC 03I .0101, but the rule that follows it is 15A NCAC 03I .0114. Can this be corrected ahead of the RRC meeting next week? Thanks!!

Jennifer Everett
DEQ Rulemaking Coordinator
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Burgos, Alexander N

Subject: FW: MFC RFC

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

Sent: Thursday, December 11, 2025 12:36 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

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

Subject: RE: MFC RFC

Awesome! Thanks.

Thanks for the heads up too!

Jennifer Everett
DEQ Rulemaking Coordinator
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Burgos, Alexander N

Subject: FW: MFC RFC

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Thursday, December 11, 2025 11:41 AM

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

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

Subject: Re: MFC RFC

Jennifer,

These look good to me. I anticipate recommending to the Commission that they approve the final version of these rules, except for .0201, .0207, .0208, and .0210 are exempt from RRC review and will be forwarded for legislative review.

Note that a Commissioner had some questions about "educational institutions" in .0101, so that may come up at the meeting.

Thank you also for the detailed discussion of franchises. I personally love those historical wrinkles from our state's early history.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: MFC RFC
Attachments: 15A NCAC 03O .0201_Form 0400.docx; 15A NCAC 03O .0207.docx; 15A NCAC 03O .0207_Form 0400.docx; 15A NCAC 03O .0208.docx; 15A NCAC 03O .0208_Form 0400.docx; 15A NCAC 03O .0210.docx; 15A NCAC 03O .0210_Form 0400.docx; MFC RFC_Agency Responses.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, December 9, 2025 10:30 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>
Subject: RE: MFC RFC

Hi Seth,

Attached are agency responses and corrected 0400 forms for each of the four franchise rules indicating the rule is exempt from RRC review. The history notes for 15A NCAC 03O .0207, .0208, and .0210 have also been updated accordingly. The history note for 15A NCAC 03O .0201 already reflected the governing session laws, so this rule is unchanged and is not attached.

Let us know if you have any questions.

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://www.deq.nc.gov/accessdeq/rules-regulations>

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Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A 03I .0101

DEADLINE FOR RECEIPT: Friday, December 12, 2025

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 your explanation for the changes on the form, you indicate that the changes to the definition of "educational institution" were to better align with the original purposes of the permit. Can you clarify what you mean by that?

As authorized by 15A NCAC 03O .0503, a Scientific or Educational Activity Permit (SEAP) is issued by the N.C. Division of Marine Fisheries (DMF) to an entity to allow activities that would otherwise be unlawful. Most SEAPs are issued to universities, colleges, and community colleges for research activities and the collection of teaching specimens. Some SEAPs are issued to museums and aquariums for collections and educational displays, and others are issued to private groups, including nongovernmental conservation organizations and other educational organizations for teaching and educational displays. The DMF also issues SEAPs to environmental consulting firms, and federal and state agencies to meet various federal and state monitoring requirements.

Current MFC Rule 15A NCAC 03I .0101(1) defines educational institutions, scientific institutions, and nongovernmental conservation organizations but does not include broad enough language to include elementary through high schools, private schools, or educational enrichment organizations, many of which apply for the SEAP and would otherwise be approved. Proposed amendments expand the definition of "educational institution" to add a reference to the statutorily defined phrase "public school unit" (N.C.G.S. § 115C-5(7a)), which includes charter schools and elementary through high schools, and add private schools and organizations whose mission includes education. These changes more closely align with the original purpose of the SEAP and would clarify the eligibility of these educational entities to be issued a SEAP.

On line 17, how do you determine if an organization's mission includes education? Is this as simple as if the organization has a mission statement that mentions education, regardless of what else the organization does?

During the Scientific or Educational Activity Permit (SEAP) application process, the N.C. Division of Marine Fisheries (DMF) reviews the applicant, the applicant's affiliation(s), and the proposed activities before a permit is issued or denied. The review includes the DMF's consideration of the applying organization's publicly stated purpose and activities. This process ensures the applicant and entity have the proper credentials to hold a SEAP and the proposed activity is evaluated before a SEAP is issued.

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

Seth Ascher
Commission Counsel

Date submitted to agency: December 4, 2025

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0201

DEADLINE FOR RECEIPT: Friday, December 12, 2025

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:

The Session law requiring this to go through legislative review also appears to exempt it from RRC review:

"SECTION 3.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Shellfish Production Requirements Rule consistent with subsection (c) of this section. section no later than July 1, 2024. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2)."

Do you disagree?

No, but the N.C. Marine Fisheries Commission (MFC) submitted the rule to the Rules Review Commission because it is related to proposed amendments to 15A NCAC 03O .0207, .0208, and .0210, and provides context for review of these other related rules. The agency will resubmit 15A NCAC 03O .0201 with an amended Form 0400 to indicate the rule is exempt from RRC review.

With respect to the timing of the MFC's adoption, Session Law 2024-32, Section 5.(a) became effective July 3, 2024, and charged the MFC with adopting a rule no later than July 1, 2024 (two days prior) to amend the Shellfish Production Requirements Rule [15A NCAC 03O .0201] consistent with the law. The Shellfish Production Requirements Rule, however, was not immediately available for amendment because on May 24, 2024, the MFC adopted amendments to 15A NCAC 03O .0201 pursuant to S.L. 2019-137. These amendments were subject to legislative review and became effective March 24, 2025, following the legislative review process. Per N.C.G.S. § 150B-21.2(g), when an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in that Part. So in May 2025, at its next business meeting following the effective date of the rule, the MFC proceeded with Notice of Text to propose additional amendments to 15A NCAC 03O .0201 to comply with Session Law 2024-32, Section 5.(a).

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

Seth Ascher
Commission Counsel

Date submitted to agency: December 4, 2025

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0207; .0208; .0210

DEADLINE FOR RECEIPT: Friday, December 12, 2025

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:

While these rules are not specifically mentioned in the session law, it appears to me that your amendments to these rules are to accommodate the changes made by the session law, and thus are “adopted pursuant” to the relevant section of the Session law. If so, the amendments to these three rules would also be subject to legislative review and exempt from RRC review. Do you disagree?

The agency agrees and will resubmit 15A NCAC 03O .0207, .0208, and .0210 with an amended Form 0400 for each rule to indicate the rules are exempt from RRC review.

Can you clarify where franchises come from? I see them referenced both in your rules and the statute, but I do not see any obvious place explaining how they are granted.

Thank you for the question. The answer is complex but lends itself to a fuller understanding of the proposed amendments to the submitted rules.

A few dozen citizens in North Carolina, and other states as well, hold a chain of deeds for submerged land claims, or claims to any part of the bed under navigable waters or any right of fishery in navigable waters. These submerged land claims originated from King’s Grants prior to the United States of America, which was founded on July 4, 1776, when it declared independence from the Kingdom of Great Britain. In 1965, the N.C. General Assembly enacted Session Law 1965-957, which included the creation of N.C.G.S. §§ 113-205 and 206 in Article 16. N.C.G.S. § 113-205 outlines a process by which the Secretary of the Department of Environmental Quality, then the Commissioner of Commercial Fisheries, could recognize a submerged land claim through the registration of that claim. The registration of any submerged land claims was required to be submitted by January 1, 1970. There were 39 submerged land claims that registered their chain of deeds by this deadline.

N.C.G.S. § 113-206 enabled the Secretary to recognize the submitted submerged land claims based on an oyster or other shellfish grantor as perpetual franchises. These perpetual franchises provide private and perpetual deeded rights to the shellfish present within the recognized boundary of the submerged land claim submitted following the outlined survey requirements of N.C.G.S. § 113-205. The deeds can be, and many have been, subdivided into smaller parcels retaining the private shellfishing rights. Currently there are 49 active shellfish franchises. The N.C. Marine Fisheries Commission's (MFC) authority over such deeded rights is limited. Of the 49 active shellfish franchises, 13 franchises (equating to 68.63 acres) are located in shellfish closure areas. These franchises are not operational. There are 36 shellfish franchises that could be operational;

Seth Ascher

Commission Counsel

Date submitted to agency: December 4, 2025

of those franchises, nine hold an Aquaculture Operation Permit. By MFC rule it is unlawful to conduct aquaculture operations using marine and estuarine resources without first securing this permit. The nine operational franchises are possessed by eight individuals and span 257.62 acres.

The N.C. General Assembly continued to show interest in developing shellfish aquaculture and oyster restoration in the state. In 1989, the N.C. General Assembly enacted Session Law 1989-423, enabling superjacent (lying over or above something else) water column amendments to shellfish leases, and Session Law 1989-958, enabling water column amendments to be added superjacent to perpetual franchises. In 2015, the N.C. General Assembly also enacted Session Law 2015-241, requiring the development of the Senator Jean Preston Oyster Sanctuary Network.

Shellfish aquaculture is the artificial propagation of shellfish stocks conducted on shellfish leases and is regulated by N.C.G.S. § 113 Article 16. Part of the administration and management of shellfish leases, as defined in Article 16 and further defined in MFC Rule, includes the commercial production requirements for a leaseholder to retain their lease. Within the commercial production requirements is the planting, or placing shellfish seed, cultch, or shell onto the lease for the purpose of growing out or collecting wild spat and growing out for harvest, and harvesting, or the commercial harvest and sale of cultured shellfish captured through the N.C. Trip Ticket system. Shellfish franchises enable the holder of the deed to conduct shellfish harvest with the same gear allowances as active shellfish bottom leases consistent with N.C.G.S. § 113-202(r). Management of active shellfish leases also includes compliance with rules and statutes concerning subjects such as proper marking of a shellfish lease and permitting of the aquaculture activities occurring on the lease.

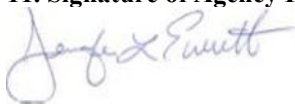
Continuing with its interest in developing shellfish aquaculture and oyster restoration in the state, the N.C. General Assembly passed Session Law 2019-37 effective July 1, 2019. The subtitle of the law is "an act to provide further support to the shellfish aquaculture industry in North Carolina." Section 3 of the law increased production and planting requirements for shellfish leases, which originally included franchises recognized pursuant to § N.C.G.S. 113-206. Subsection 3(d) of the Act required the MFC to amend 15A NCAC 03O .0201 consistent with Subsection 3(c) of the Act that sets shellfish production and planting requirements for leases granted July 1, 2019, and after. At its May 2023 business meeting, the MFC began the rulemaking process and then on May 24, 2024, voted to give final approval to adopt the amendments to conform this rule to the requirements of this law. The rule was automatically subject to legislative review during the 2025 legislative session and then became effective March 24, 2025.

Even though the increased production and planting requirements in Session Law 2019-37 originally included franchises, DMF has understood that because franchises recognized pursuant to § N.C.G.S. 113-206 are perpetual, it did not have the authority to terminate them, and thus subjecting a franchise to production requirements would have no consequence. Effective July 3, 2024, the N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of § N.C.G.S. 113-202. Even before the MFC adopted the rule amendments in May 2024, the DMF was already developing proposed clarifying amendments to affected MFC rules but needed to await the outcome of legislative review of the rules in 2025 to have the opportunity to propose additional amendments.

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

Seth Ascher
Commission Counsel
Date submitted to agency: December 4, 2025

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: N.C. MARINE FISHERIES COMMISSION	
2. Rule citation & name (name not required for repeal): 15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND FRANCHISES	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READoption <input type="checkbox"/> REPEAL through READoption	
4. Rule exempt from RRC review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))	5. Rule automatically subject to legislative review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2025 Link to Agency notice: https://deq.nc.gov/mfc-proposed-rules Hearing on: August 26, 2025 <input checked="" type="checkbox"/> The requirements listed in G.S. 150B-19.1(c)(1)-(5) were posted on the agency's Web site no later than the publication date of the notice of text in the N.C. Register. Adoption by Agency on: November 20, 2025 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2019-37, s. 3, as amended by S.L. 2024-32, s. 5.(a) <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: 9B. Explain: Proposed amendments include the removal of franchises from all shellfish production requirements, as the production requirements are grounds for termination of a leasehold only. Shellfish franchises recognized under N.C.G.S. § 113-206 are perpetual. The N.C. Division of Marine Fisheries has understood that because franchises are perpetual, the Division does not have the authority to terminate franchises and thus subjecting a franchise to production requirements would have no consequence. The N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37, Section 3. The N.C. Marine Fisheries Commission's authority over private and protected deeded rights of a shellfish franchise is limited to subjects such as proper marking requirements and permitting of the aquaculture activities occurring on a franchise. Additional amendments in paragraphs (d) through (g) clarify production requirements for shellfish leases based on the date a shellfish lease was granted or last renewed. Additional amendments to paragraphs (a) and (i) clarify who determines eligibility for additional shellfish lease acreage, the time at which the determination of eligibility for additional acreage occurs, what is considered additional shellfish lease acreage, and what is considered acres under a shellfish lease.	
10. Rulemaking Coordinator: JENNIFER EVERETT Phone: 919-707-8595 E-Mail: JENNIFER.EVERETT@DEQ.NC.GOV Additional agency contact, if any: CATHERINE BLUM Phone: 252-515-5500 E-Mail: CATHERINE.BLUM@DEQ.NC.GOV	11. Signature of Agency Head* or Rule-making Coordinator:  By signing, I have verified that the information contained on this form is true and accurate to the best of my knowledge. *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: JENNIFER EVERETT Title: RULEMAKING COORDINATOR
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 15A NCAC 03O .0207 is amended as published in 40:03 NCR 303 as follows:

2
3 **15A NCAC 03O .0207 SHELLFISH LEASE AND FRANCHISE PRODUCTION REPORTS**

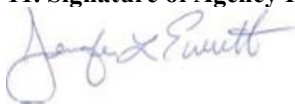
4 (a) The holder or holders of a shellfish lease ~~or franchise~~ shall provide an annual production report to the Division of
5 Marine Fisheries by March 31 of each year showing the amounts of material planted, purchased, and harvested; where
6 and when the material was obtained; and when the material was planted in accordance with Rules .0201 and .0202 of
7 this Section. The report shall include documentation of purchased seed in accordance with Rule .0201 of this Section.

8 (b) The Division shall provide reporting forms annually to each shellfish lease ~~or franchise~~ holder to be used for the
9 annual production report.

10 (c) Failure by the holder or holders of the shellfish lease ~~or franchise~~ to submit the required annual production report
11 or filing an incomplete report or a report containing false information constitutes grounds for termination as set forth
12 in Rule .0208 of this Section.

13
14 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; ~~113-206;~~*
15 *143B-289.52;*
16 *Eff. January 1, 1991;*
17 *Amended Eff. September 1, 1991;*
18 *Readopted Eff. June 1, ~~2022-2022;~~*
19 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37, Section 3, as amended by S.L.*
20 *2024-32, Section 5.(a)).*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: N.C. MARINE FISHERIES COMMISSION	
2. Rule citation & name (name not required for repeal): 15A NCAC 03O .0207 SHELLFISH LEASE PRODUCTION REPORTS	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READoption <input type="checkbox"/> REPEAL through READoption	
4. Rule exempt from RRC review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))	5. Rule automatically subject to legislative review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2025 Link to Agency notice: https://deq.nc.gov/mfc-proposed-rules Hearing on: August 26, 2025 <input checked="" type="checkbox"/> The requirements listed in G.S. 150B-19.1(c)(1)-(5) were posted on the agency's Web site no later than the publication date of the notice of text in the N.C. Register. Adoption by Agency on: November 20, 2025 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2019-37, s. 3, as amended by S.L. 2024-32, s. 5.(a) <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: 9B. Explain: Proposed amendments remove franchises from production report requirements, consistent with Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37, Section 3. Franchises are perpetual and not subject to termination, and compliant production reports relate to procedures for termination.	
10. Rulemaking Coordinator: JENNIFER EVERETT Phone: 919-707-8595 E-Mail: JENNIFER.EVERETT@DEQ.NC.GOV Additional agency contact, if any: CATHERINE BLUM Phone: 252-515-5500 E-Mail: CATHERINE.BLUM@DEQ.NC.GOV	11. Signature of Agency Head* or Rule-making Coordinator:  By signing, I have verified that the information contained on this form is true and accurate to the best of my knowledge. *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: JENNIFER EVERETT Title: RULEMAKING COORDINATOR
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 15A NCAC 03O .0208 is amended as published in 40:03 NCR 303 as follows:

2
3 **15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES AND FRANCHISES**

4 (a) Procedures for termination of shellfish leases ~~and franchises~~ are provided in G.S. 113-202.

5 (b) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a shellfish lease ~~or franchise~~ holder that failed to meet the
6 requirements in G.S. 113-202, G.S. 113-202.1, G.S. 113-202.2, or the rules of this Section that govern a determination
7 of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single
8 extension period of no more than two years per contract period upon a showing of hardship by written notice to the
9 Fisheries Director or the Fisheries Director's designee received prior to the expiration of the lease term that documents
10 one of the following occurrences caused or will cause the lease ~~or franchise~~ holder to fail to meet lease requirements:

- 11 (1) death, illness, or incapacity of the shellfish lease ~~or franchise~~ holder or the holder's immediate family
12 as defined in G.S. 113-168 that prevented or will prevent the lease ~~or franchise~~ holder from working
13 the lease;
14 (2) damage to the shellfish lease ~~or franchise~~ from hurricanes, tropical storms, or other severe weather
15 events recognized by the National Weather Service;
16 (3) shellfish mortality caused by disease, natural predators, or parasites; or
17 (4) damage to the shellfish lease ~~or franchise~~ from a manmade disaster that triggers a state emergency
18 declaration or federal emergency declaration.

19 (c) In the case of hardship as described in Paragraph (b) of this Rule, the notice shall state the shellfish lease ~~or~~
20 ~~franchise~~ number. In the case of hardship as described in Subparagraph (b)(1) of this Rule, the notice shall also state
21 the name of the shellfish lease ~~or franchise~~ holder or immediate family member and either the date of death or the date
22 of the illness or incapacity. The Fisheries Director may require a doctor's verification that the illness or incapacity
23 occurred. In the case of hardship as described in Subparagraphs (b)(2) through (b)(4) of this Rule, the notice shall also
24 include documentation of damage to the shellfish ~~lease or franchise~~ lease. Written notice and supporting
25 documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box
26 769, Morehead City, NC 28557.

27
28 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; ~~413-206;~~*
29 *143B-289.52;*

30 *Eff. January 1, 1991;*

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

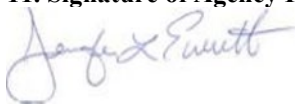
32 *Temporary Amendment Eff. January 1, 2002; October 1, 2001;*

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

34 *Readopted Eff. June 1, ~~2022-2022~~;*

35 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37, Section 3, as amended by S.L.*
36 *2024-32, Section 5.(a)).*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: N.C. MARINE FISHERIES COMMISSION	
2. Rule citation & name (name not required for repeal): 15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))	5. Rule automatically subject to legislative review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2025 Link to Agency notice: https://deq.nc.gov/mfc-proposed-rules Hearing on: August 26, 2025 <input checked="" type="checkbox"/> The requirements listed in G.S. 150B-19.1(c)(1)-(5) were posted on the agency's Web site no later than the publication date of the notice of text in the N.C. Register. Adoption by Agency on: November 20, 2025 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2019-37, s. 3, as amended by S.L. 2024-32, s. 5.(a) <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: 9B. Explain: Proposed amendments eliminate references to franchises, consistent with Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37, Section 3.	
10. Rulemaking Coordinator: JENNIFER EVERETT Phone: 919-707-8595 E-Mail: JENNIFER.EVERETT@DEQ.NC.GOV Additional agency contact, if any: CATHERINE BLUM Phone: 252-515-5500 E-Mail: CATHERINE.BLUM@DEQ.NC.GOV	11. Signature of Agency Head* or Rule-making Coordinator:  By signing, I have verified that the information contained on this form is true and accurate to the best of my knowledge. *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: JENNIFER EVERETT Title: RULEMAKING COORDINATOR
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 15A NCAC 03O .0210 is amended as published in 40:03 NCR 303 as follows:

2
3 **15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES**

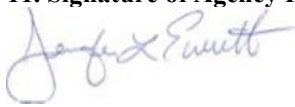
4 (a) A franchise holder desiring a permit from the Division of Marine Fisheries to conduct shellfish aquaculture on
5 their franchise shall submit a Shellfish Management Plans, Plan, prepared in accordance with the standards for a
6 Shellfish Lease Management Plan in Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries
7 within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

8 (b) The Shellfish Management Plan requirements in Paragraph (a) of this Rule and all other requirements and
9 conditions of this Section affecting management of franchises shall apply to all valid franchises.

10 ~~(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases~~
11 ~~in accordance with Rules .0201 and .0207 of this Section averaged over the most recent three year period after January~~
12 ~~1 following the second anniversary of the dates of recognition of claims as valid franchises and continuing throughout~~
13 ~~the term of Shellfish Management Plans required in Paragraph (a) of this Rule.~~

14
15 *History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.2; 113-205; 113-206; 143B-289.52;*
16 *Eff. January 1, 1991;*
17 *Amended Eff. October 1, 2008; September 1, 1991;*
18 *Readopted Eff. June 1, 2022-2022;*
19 *Amended Eff. (Pending legislative review pursuant to S.L. 2019-37, Section 3, as amended by S.L.*
20 *2024-32, Section 5.(a)).*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: N.C. MARINE FISHERIES COMMISSION	
2. Rule citation & name (name not required for repeal): 15A NCAC 03O .0210 STANDARDS AND REQUIREMENTS FOR FRANCHISES	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READoption <input type="checkbox"/> REPEAL through READoption	
4. Rule exempt from RRC review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))	5. Rule automatically subject to legislative review? <input checked="" type="checkbox"/> Yes. Cite authority: S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5.(a))
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2025 Link to Agency notice: https://deq.nc.gov/mfc-proposed-rules Hearing on: August 26, 2025 <input checked="" type="checkbox"/> The requirements listed in G.S. 150B-19.1(c)(1)-(5) were posted on the agency's Web site no later than the publication date of the notice of text in the N.C. Register. Adoption by Agency on: November 20, 2025 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2019-37, s. 3, as amended by S.L. 2024-32, s. 5.(a) <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: 9B. Explain: Proposed amendments clarify the proper activation of a shellfish franchise enables the franchise to be permitted, remove the time limit of 30 days following activation, and remove the method for evaluating production of a franchise, as franchises are perpetual and not subject to termination. The proposed amendments are consistent with Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37, Section 3.	
10. Rulemaking Coordinator: JENNIFER EVERETT Phone: 919-707-8595 E-Mail: JENNIFER.EVERETT@DEQ.NC.GOV Additional agency contact, if any: CATHERINE BLUM Phone: 252-515-5500 E-Mail: CATHERINE.BLUM@DEQ.NC.GOV	11. Signature of Agency Head* or Rule-making Coordinator:  By signing, I have verified that the information contained on this form is true and accurate to the best of my knowledge. *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: JENNIFER EVERETT Title: RULEMAKING COORDINATOR
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

Burgos, Alexander N

From: Everett, Jennifer
Sent: Thursday, December 4, 2025 3:45 PM
To: Ascher, Seth M; Blum, Catherine
Cc: Burgos, Alexander N
Subject: RE: MFC RFC

Thanks Seth, 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://www.deq.nc.gov/accessdeq/rules-regulations>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, December 4, 2025 3:37 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: MFC RFC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Marine Fisheries Commission for the December 2025 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 18, 2025, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is my initial Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on December 12, 2025.

Please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.