

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

AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 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?

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?

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

1 15A NCAC 03I .0101 is amended as published in 40:03 NCR 293-300 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-Aquariums; or a public school unit, private school, or~~
17 an organization whose mission includes education.
- 18 (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except
19 the Atlantic Ocean.
- 20 (d) length of finfish:
- 21 (i) "Curved fork length" means a length determined by measuring along a line tracing
22 the contour of the body from the tip of the upper jaw to the middle of the fork in
23 the caudal (tail) fin.
- 24 (ii) "Fork length" means a length determined by measuring along a straight line the
25 distance from the tip of the snout with the mouth closed to the middle of the fork
26 in the caudal (tail) fin, except that fork length for billfish is measured from the tip
27 of the lower jaw to the middle of the fork of the caudal (tail) fin.
- 28 (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal
29 insertion of the pectoral fin to the fork of the tail measured along the contour of
30 the body in a line that runs along the top of the pectoral fin and the top of the
31 caudal keel.
- 32 (iv) "Total length" means a length determined by measuring along a straight line the
33 distance from the tip of the snout with the mouth closed to the tip of the
34 compressed caudal (tail) fin.
- 35 (e) "Nongovernmental conservation organization" means an organization whose primary
36 mission is the conservation of natural resources. For the purpose of this Chapter, a

determination of the organization's primary mission is based upon the Division of Marine Fisheries' consideration of the organization's publicly stated purpose and activities.

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

(i) that are contaminated with fecal material, pathogenic microorganisms, poisonous or deleterious substances, or marine biotoxins that render the consumption of shellfish from those growing waters hazardous. This includes poisonous or deleterious substances as listed in the latest approved edition of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, Section IV: Guidance Documents, Chapter II: Growing Areas; Action Levels, Tolerances and Guidance Levels for Poisonous or Deleterious Substances in Seafood, which is incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>, at no cost;

(ii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be adjacent to a sewage treatment plant outfall or other point source outfall that may contaminate shellfish and cause a food safety hazard as defined in 15A NCAC 18A .0301;

(iii) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be in or adjacent to a marina;

(iv) that have been determined through a sanitary survey as defined in 15A NCAC 18A .0901 to be impacted by other potential sources of pollution that render the consumption of shellfish from those growing waters hazardous, such as a wastewater treatment facility that does not contaminate a shellfish area when it is operating normally but will contaminate a shellfish area and shellfish in that area when a malfunction occurs; or

(v) where the Division is unable to complete the monitoring necessary to determine the presence of contamination or potential pollution sources.

(g) "Recreational possession limit" means restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

(h) "Recreational quota" means total quantity of fish allocated for harvest for a recreational purpose.

(i) "Regular closed oyster season" means March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.

(j) "Scientific institution" means one of the following entities:

(i) an educational institution as defined in this Item;

- 1 (ii) a state or federal agency charged with the management of marine or estuarine
2 resources; or
- 3 (iii) a professional organization or secondary school working under the direction of,
4 or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii)
5 of this Item.
- 6 (2) fishing activities:
- 7 (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of
8 marine or estuarine resources, or other non-native species that may thrive if introduced into
9 Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of
10 rearing on private bottom (with or without the superadjacent water column) or in a
11 controlled environment. A controlled environment provides and maintains throughout the
12 rearing process one or more of the following:
- 13 (i) food;
- 14 (ii) predator protection;
- 15 (iii) salinity;
- 16 (iv) temperature controls; or
- 17 (v) water circulation, utilizing technology not found in the natural environment.
- 18 (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available
19 to work the gear and be within 100 yards of any gear in use by that person at all times.
20 Attended does not include being in a building or structure.
- 21 (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former
22 hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a
23 controlled environment. A controlled environment provides and maintains throughout the
24 shedding process one or more of the following:
- 25 (i) food;
- 26 (ii) predator protection;
- 27 (iii) salinity;
- 28 (iv) temperature controls; or
- 29 (v) water circulation, utilizing technology not found in the natural environment. A
30 shedding operation does not include transporting pink or red-line peeler crabs to
31 a permitted shedding operation.
- 32 (d) "Depurate" or "depuration" has the same meaning as defined in the 2019 revision of the
33 NSSP Guide for the Control of Molluscan Shellfish, Section I: Purpose and Definitions.
34 This definition is incorporated by reference, not including subsequent amendments and
35 editions. A copy of the reference material can be found at
36 [https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp)
37 [program-nssp](https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp), at no cost.

- 1 (e) "Long haul operation" means fishing a seine towed between two vessels.
- 2 (f) "Peeler crab" means a blue crab that has a soft shell developing under a hard shell and
- 3 having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- 4 (g) "Possess" means any actual or constructive holding whether under claim of ownership or
- 5 not.
- 6 (h) "Recreational purpose" means a fishing activity that is not a commercial fishing operation
- 7 as defined in G.S. 113-168.
- 8 (i) "Swipe net operations" means fishing a seine towed by one vessel.
- 9 (j) "Transport" means to ship, carry, or cause to be carried or moved by public or private
- 10 carrier by land, sea, or air.
- 11 (k) "Use" means to employ, set, operate, or permit to be operated or employed.
- 12 (3) gear:
- 13 (a) "Bunt net" means the last encircling net of a long haul or swipe net operation constructed
- 14 of small mesh webbing. The bunt net is used to form a pen or pound from which the catch
- 15 is dipped or bailed.
- 16 (b) "Channel net" means a net used to take shrimp that is anchored or attached to the bottom
- 17 at both ends or with one end anchored or attached to the bottom and the other end attached
- 18 to a vessel.
- 19 (c) "Commercial fishing equipment or gear" means all fishing equipment used in Coastal
- 20 Fishing Waters except:
- 21 (i) cast nets;
- 22 (ii) collapsible crab traps, a trap used for taking crabs with the largest open dimension
- 23 no larger than 18 inches and that by design is collapsed at all times when in the
- 24 water, except when it is being retrieved from or lowered to the bottom;
- 25 (iii) dip nets or scoops having a handle not more than eight feet in length and a hoop
- 26 or frame to which the net is attached not exceeding 60 inches along the perimeter;
- 27 (iv) gigs or other pointed implements that are propelled by hand, whether or not the
- 28 implement remains in the hand;
- 29 (v) hand operated rakes no more than 12 inches wide and weighing no more than six
- 30 pounds and hand operated tongs;
- 31 (vi) hook and line, and bait and line equipment other than multiple-hook or multiple-
- 32 bait trotline;
- 33 (vii) landing nets used to assist in taking fish when the initial and primary method of
- 34 taking is by the use of hook and line;
- 35 (viii) minnow traps when no more than two are in use;
- 36 (ix) seines less than 30 feet in length;

(x) spears, Hawaiian slings, or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.

(d) "Corkline" means the support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.

(e) "Dredge" means a device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

(f) "Fixed or stationary net" means a net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

(g) "Fyke net" means an entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

(h) "Gill net" means a net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.

(i) "Headrope" means the support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.

(j) "Hoop net" means an entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

(k) "Lead" means a mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.

(l) "Mechanical methods for clamming" means dredges, hydraulic clam dredges, stick rakes, and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.

- (m) "Mechanical methods for oystering" means dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
- (n) "Mesh length" means the distance from the inside of one knot to the outside of the opposite knot, when the net is stretched hand-tight in a manner that closes the mesh opening.
- (o) "Pound net set" means a fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
- (p) "Purse gill net" means any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (q) "Seine" means a net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh length, webbing diameter, or method in which it is used.
- (4) "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. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, are:
- (a) "Anadromous fish nursery areas" means those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (b) "Anadromous fish spawning areas" means those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (c) "Coral" means:
- (i) fire corals and hydrocorals (Class Hydrozoa);
 - (ii) stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
- (d) "Intertidal oyster bed" means a formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (e) "Live rock" means living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.)(Division Chlorophyta);

- (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta);
- (iv) sponges (Phylum Porifera);
- (v) hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
- (vi) Bryozoans (Phylum Bryozoa);
- (vii) tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
- (viii) mussel banks (Phylum Mollusca: Gastropoda); and
- (ix) acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).

(f) "Nursery areas" means areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.

(g) "Shellfish producing habitats" means historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

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

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

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

1 associated with one or more SAV species and include the sediment within these
2 areas; or

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

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

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

- 19 (a) "Assignment" means temporary transferal to another person of privileges under a license
20 for which assignment is permitted. The person assigning the license delegates the privileges
21 permitted under the license to be exercised by the assignee, but retains the power to revoke
22 the assignment at any time, and is still the responsible party for the license.
- 23 (b) "Designee" means any person who is under the direct control of the permittee or who is
24 employed by or under contract to the permittee for the purposes authorized by the permit.
- 25 (c) "For hire vessel", as defined by G.S. 113-174, means when the vessel is fishing in State
26 waters or when the vessel originates from or returns to a North Carolina port.
- 27 (d) "Franchise" means a franchise recognized pursuant to G.S. 113-206.
- 28 (e) "Holder" means a person who has been lawfully issued in the person's name a license,
29 permit, ~~franchise~~, shellfish lease, or ~~assignment~~, assignment, or who possesses a shellfish
30 franchise recognized pursuant to G.S. 113-206.
- 31 (f) "Land" means:
- 32 (i) for commercial fishing operations, when fish reach the shore or a structure
33 connected to the shore.
- 34 (ii) for purposes of trip tickets, when fish reach a licensed seafood dealer, or where
35 the fisherman is the dealer, when fish reach the shore or a structure connected to
36 the shore.

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

(g) "Licensee" means any person holding a valid license from the ~~Department~~ Division to take or deal in ~~marine fisheries resources, resources governed by any provision of Subchapter 113 of the North Carolina General Statutes under the authority of the Marine Fisheries Commission or any rule adopted by the Marine Fisheries Commission pursuant to Subchapter 113,~~ except as otherwise defined in 15A NCAC 03O .0109.

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

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

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

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

(l) "Permittee" means any person who has been issued a permit from the Division to take or deal in resources governed by any provision of Subchapter 113 of the North Carolina General Statutes under the authority of the Marine Fisheries Commission or any rule adopted by the Marine Fisheries Commission pursuant to Subchapter 113.

(m) "Quota monitoring log" means paper forms provided by the Division and electronic data files generated from software or web-based utilities provided by the Division for the reporting of fisheries statistics by licensed fish dealers who hold dealer permits for monitoring fisheries under a quota or allocation.

~~(n)~~ (n) "Responsible party" means the person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.

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

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

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

~~(p)~~(r) "Trip ticket" means paper forms provided by the Division and electronic data files generated from software or web-based utilities provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

*History Note: G.S. 113-134; 113-174; 113-182; 143B-289.52; S.L. 2015-241, s. 14.10A;
Eff. January 1, 1991;
Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;
Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;
Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;
Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December
1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;
Readopted Eff. June 1, 2022;
Amended Eff. March 24, ~~2025~~2025;
Amended Eff. (Pending legislative review of 15A NCAC 03O .0503).*

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AGENCY: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03O .0201

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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?

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

1 15A NCAC 03O .0201 is amended as published in 40:03 NCR 301-302 as follows:

2
3 **SECTION .0200 – SHELLFISH LEASES AND FRANCHISES**
4

5 **15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH LEASES AND**
6 **FRANCHISES**

7 (a) For the purpose of this Section:

- 8 (1) "any acres under a shellfish lease" shall include a water column amendment superjacent to a
9 franchise.
10 (2) "application for additional shellfish lease acreage" shall include a water column amendment
11 application to an existing shellfish bottom lease or to a franchise when the franchise holder also
12 holds a shellfish bottom lease.
13 ~~(1)(3)~~ "extensive shellfish culture" shall mean shellfish grown on the bottom without the use of cages,
14 racks, bags, or floats.
15 ~~(2)(4)~~ "intensive shellfish culture" shall mean shellfish grown on the bottom or in the water column using
16 cages, racks, bags, or floats.
17 ~~(3)(5)~~ "plant" shall mean providing evidence of purchasing shellfish seed or planting shellfish seed or
18 authorized cultch materials on a shellfish ~~lease or franchise lease.~~
19 ~~(4)(6)~~ "produce" shall mean the culture and harvest of oysters, clams, scallops, or mussels from a shellfish
20 lease ~~or franchise~~ and lawful sale of those shellfish to the public at large or to a licensed shellfish
21 dealer.

22 (b) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and
23 requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish
24 aquaculture purposes:

- 25 (1) the proposed shellfish lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-
26 201.1, or have 10 bushels or more of shellfish per acre;
27 (2) the proposed shellfish lease area shall not be closer than 250 feet from a developed shoreline or a
28 water-dependent shore-based structure, except no minimum setback is required when the area to be
29 leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-
30 201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped
31 shoreline. For the purpose of this Rule, a water-dependent shore-based structure shall include docks,
32 wharves, boat ramps, bridges, bulkheads, and groins;
33 (3) the proposed shellfish lease area shall not be closer than 250 feet to an existing lease;
34 (4) the proposed shellfish lease area, either alone or when considered cumulatively with other existing
35 lease areas in the vicinity, shall not interfere with navigation or with existing, traditional uses of the
36 area; and
37 (5) the proposed shellfish lease area shall not be less than one-half acre and shall not exceed 10 acres.

(c) To be suitable for leasing for shellfish aquaculture purposes, shellfish water column leases superjacent to a shellfish bottom lease shall meet the standards in G.S. 113-202.1 and shellfish water column leases superjacent to franchises shall meet the standards in G.S. 113-202.2.

(d) Shellfish bottom leases ~~and franchises~~ granted or renewed on or before July 1, 2019 and not renewed after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce 10 bushels of shellfish per acre per year; and
- (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

(e) Shellfish water column leases granted or renewed on or before July 1, 2019 and not renewed after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and G.S. 113-202.2:

- (1) they produce 40 bushels of shellfish per acre per year; or
- (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.

(f) Shellfish bottom leases ~~and franchises~~ granted or renewed after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:

- (1) they produce a minimum of 20 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish bottom ~~lease or franchise; lease; or~~
- (2) for intensive culture bottom operations, the holder of the shellfish bottom ~~lease or franchise~~ provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually and for extensive culture bottom operations, the holder of the ~~lease or franchise~~ plants a minimum of 15,000 shellfish seed per acre per year.

(g) Shellfish water column leases granted or renewed after July 1, 2019 shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:

- (1) they produce a minimum of 50 bushels of shellfish per acre averaged over the previous three-year period beginning in year five of the shellfish water column lease; or
- (2) the holder of the shellfish water column lease provides evidence of purchasing a minimum of 23,000 shellfish seed per acre annually.

(h) The following standards shall be applied to determine compliance with Paragraphs (d), (e), (f), and (g) of this Rule:

- (1) only shellfish planted or produced as defined in Paragraph (a) of this Rule shall be included in the annual shellfish ~~lease and franchise~~ production reports required by Rule .0207 of this Section.
- (2) if more than one shellfish ~~lease or franchise~~ is used in the production of shellfish, one of the ~~leases or franchises~~ used in the production of the shellfish shall be designated as the producing ~~lease or franchise~~ for those shellfish. Each bushel of shellfish shall be produced by only one shellfish ~~lease~~

1 ~~or franchise-lease~~. Shellfish transplanted between shellfish leases ~~or franchises~~ shall be credited as

2 planting effort on only one ~~lease or franchise-lease~~.

3 (3) production information and planting effort information shall be compiled and averaged separately

4 to assess compliance with the requirements of this Rule. Shellfish bottom leases ~~and franchises~~

5 granted on or before July 1, 2019 shall meet both the production requirement and the planting effort

6 requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in

7 compliance. Shellfish bottom leases ~~and franchises~~ granted after July 1, 2019 and shellfish water

8 column leases shall meet either the production requirement or the planting effort requirement within

9 the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance.

10 (4) all bushel measurements shall be in standard U.S. bushels.

11 (5) in determining production ~~and marketing~~ averages and planting effort averages for information not

12 reported in bushel measurements, the following conversion factors shall be used:

13 (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and

14 (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds

15 of fossil stone equal one bushel.

16 (6) production rate averages shall be computed irrespective of transfer of the shellfish ~~lease or~~

17 ~~franchise-lease~~. The production rates shall be averaged for the following situations using the time

18 periods described:

19 (A) for an initial shellfish bottom ~~lease or franchise-lease~~, over the consecutive full calendar

20 years remaining on the bottom lease ~~or franchise~~ contract after December 31 following the

21 second anniversary of the initial bottom ~~lease or franchise-lease~~;

22 (B) for a renewal shellfish bottom ~~lease or franchise-lease~~, over the consecutive full calendar

23 years beginning January 1 of the final year of the previous bottom lease ~~or franchise~~ term

24 and ending December 31 of the final year of the current bottom lease ~~or franchise~~ contract;

25 (C) for a shellfish water column lease, over the first five-year period for an initial water column

26 lease and over the most recent five-year period thereafter for a renewal water column lease;

27 or

28 (D) for a shellfish bottom lease ~~or franchise~~ issued an extension period under Rule .0208 of

29 this Section, over the most recent five-year period.

30 (7) in the event that a portion of an existing shellfish lease ~~or franchise~~ is obtained by a new lease ~~or~~

31 ~~franchise~~ holder, the production history for the portion obtained shall be a percentage of the

32 originating lease ~~or franchise~~ production equal to the percentage of the area of lease ~~or franchise~~ site

33 obtained to the area of the originating ~~lease or franchise-lease~~.

34 (i) ~~To~~ Consistent with G.S. 113-202, G.S. 113-202.1, and G.S. 113-202.2, to be deemed eligible ~~for by the Secretary~~

35 to hold additional shellfish lease acreage, persons holding any acres under a shellfish lease ~~or franchise~~ shall meet the

36 following requirements established in: at the time of submitting a shellfish lease application for additional shellfish

37 lease acreage:

- (1) Paragraphs (d), (e), (f), and (g) of this Rule;
- (2) Rule .0204 of this Section; and
- (3) Rule .0503(a) of this Subchapter.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52; S.L. 2019-37, s. 3; S.L. 2024-32, s. 5(a);
Eff. January 1, 1991;
Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003;
Readopted Eff. August 23, 2022;
Amended Eff. (Pending legislative review pursuant to S.L. 2019-37, Section 3, as amended by S.L. 2024-32, Section 5(a)); March 24, 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?

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.

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

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 of 15A NCAC 03O .0201).*

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; ~~113-206;~~*
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 of 15A NCAC 03O .0201).*

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 of 15A NCAC 03O .0201).*