

Burgos, Alexander N

Subject: FW: MFC Temp Rules-15A NCAC 03I .0123-4

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Tuesday, June 25, 2024 8:59 AM
To: Blum, Catherine <catherine.blum@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Bissette, Jesse <jesse.bissette@deq.nc.gov>
Subject: RE: MFC Temp Rules-15A NCAC 03I .0123-4

Good morning,

Mr. Burgos will add the map to the agenda today.

Thanks,

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

From: Blum, Catherine <catherine.blum@deq.nc.gov>
Sent: Tuesday, June 25, 2024 8:57 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Bissette, Jesse <jesse.bissette@deq.nc.gov>
Subject: RE: MFC Temp Rules-15A NCAC 03I .0123-4

Good morning, Mr. Wiggs,

We would like to provide the attached map in support of the agenda item for the Marine Fisheries Commission's temporary harvest reporting rules. The RRC has acknowledged that providing members a map for supporting documentation is appreciated.

Thank you,

Catherine Blum
Rulemaking Coordinator
Division of Marine Fisheries
N.C. Department of Environmental Quality

catherine.blum@deq.nc.gov
252-726-7021 office

P.O. Box 769

3441 Arendell Street
Morehead City, NC 28557-0769

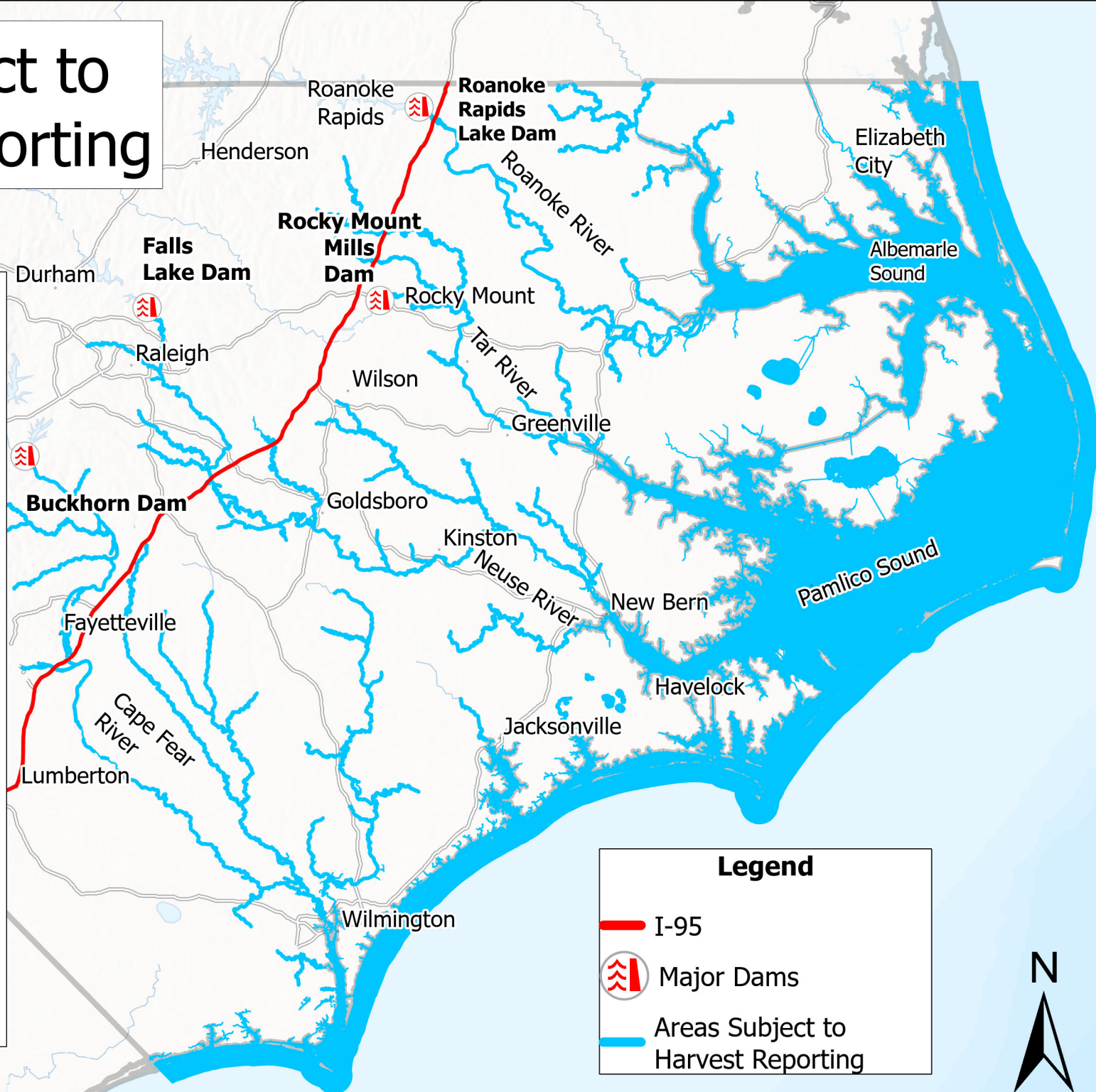


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DEQ is updating its email addresses to @deq.nc.gov in phases from May 1st to June 9th. Employee email addresses may look different, but email performance will not be impacted.

Areas Subject to Harvest Reporting

This map is for illustrative purposes and does not supersede any laws, rules or proclamations. Session Law 2023-137, Section 6 requires reporting of certain fish harvested in coastal fishing waters, joint fishing waters, and inland fishing waters adjacent to coastal or joint fishing waters. This map was produced to highlight the major waterbodies where reporting will be required. Some smaller waters impacted by the requirement may not be shown in this map due to graphical limitations. An interactive map that anglers can use to view specific water bodies is under development.



0 12.5 25 50 Miles

Burgos, Alexander N

Subject: FW: MFC Temp Rules-15A NCAC 03I .0123-4

From: Blum, Catherine <catherine.blum@deq.nc.gov>

Sent: Monday, June 24, 2024 1:38 PM

To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Bissette, Jesse <jesse.bissette@deq.nc.gov>

Subject: RE: MFC Temp Rules-15A NCAC 03I .0123-4

Will do. Thank you, Mr. Wiggs.

Catherine Blum

Rulemaking Coordinator

Division of Marine Fisheries

N.C. Department of Environmental Quality

catherine.blum@deq.nc.gov

252-726-7021 office

P.O. Box 769

3441 Arendell Street

Morehead City, NC 28557-0769



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DEQ is updating its email addresses to @deq.nc.gov in phases from May 1st to June 9th. Employee email addresses may look different, but email performance will not be impacted.

Burgos, Alexander N

Subject: FW: MFC Temp Rules-15A NCAC 03I .0123-4

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

Sent: Monday, June 24, 2024 12:36 PM

To: Blum, Catherine <catherine.blum@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>; Maier, Shawn <shawn.maier@deq.nc.gov>; Bissette, Jesse <jesse.bissette@deq.nc.gov>

Subject: RE: MFC Temp Rules-15A NCAC 03I .0123-4

Ms. Blum,

I intend to recommend that the RRC approve all these Rules. Please submit the final revised rules via email to oah.rules@oah.nc.gov no later than 5pm today. The electronic copy must be saved as the official rule name (XX NCAC XXXX). Please include me on the email.

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: MFC Temp Rules-15A NCAC 03I .0123-4

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

Sent: Friday, June 21, 2024 12:41 PM

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>; Maier, Shawn <shawn.maier@deq.nc.gov>; Bisette, Jesse <jesse.bisette@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>

Subject: RE: MFC Temp Rules-15A NCAC 03I .0123-4

Jennifer,

Please see below.

15A NCAC 03I .0123

- I think your agency needs to define “permanent possession” in the Rule (e.g., when an individual stops fishing and decides to keep the fish). I suggest using “permanent personal possession” in the definition of “harvest” or specify who will have possession when defining “permanent possession” in the Rule (e.g. “when an angler stops fishing and decides to keep the fish”). Who reduces the fish to permanent possession is important to determine for compliance with 15A NCAC 03I .0124(b).
- In (a)(1), change the second “the” to “any” shore.
- In (a)(2), please cite or cross reference the definitions of “use” and “gear” in 15A NCAC 03I .0101.
- In (b) lines 12-13, is “in accordance with Paragraph (a) of this Rule” necessary to include?
- In (b) lines 13-14, please add a comma after “dealer” and after “Section”.

The requests and questions above also apply to 15A NCAC 03I 0124.

Please reply at your earliest convenience. Thanks,

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: MFC Temp Rules-15A NCAC 03I .0123-4
Attachments: 6_2024_Marine Fisheries Commission Request for Changes_MFC Responses.docx; 15A NCAC 03I .0123.docx; 15A NCAC 03I .0124.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, June 20, 2024 3:00 PM
To: Wiggs, Travis C <travis.wiggs@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>; Maier, Shawn <shawn.maier@deq.nc.gov>; Bisette, Jesse <jesse.bisette@deq.nc.gov>; RYAN, CHRISTINE M <Cryan@NCDOJ.GOV>
Subject: RE: MFC Temp Rules-15A NCAC 03I .0123-4

Travis,

Attached are responses to your technical change requests as well as the two temp rules from the Marine Fisheries Commission.

Let us know if you need anything further.

Jennifer

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: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0123 (Temporary)

DEADLINE FOR RECEIPT: Thursday, June 20, 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 line 4, replace "Pursuant to" with "Under" for clarity. "Under" is more accurate since "harvest" is not defined in G.S. 113-170.3.

Completed

In line 5, will the phrase "reduction of such fish to possession" be clear to your regulated public? Who will have "possession" of the fish once they're reduced? The vessel's captain, first mate, deckhands, or anglers may all be involved in catching fish.

The text has been amended to change "reduction of such fish to possession" to "reducing it to permanent possession" as found in the WRC's rule (see line 11 in 15A NCAC 10C .0218).

In (a)(1), should "the" shore be changed to "any" shore?

Completed

In (a)(2), the phrase "at the moment a person is no longer engaged in fishing" seems amorphous. What if someone catches a fish, stops briefly, then resumes fishing? When is the "harvest" complete for the caught fish? The timing of when the harvest is complete is important for compliance with subsection (b) of this Rule.

The text has been amended to change "at the moment a person is no longer engaged in fishing" to "when the person's fishing gear is stowed and no longer in use." The MFC defines "use" in 15A NCAC 03I .0101.

In (b) line 9, to whom and how shall the harvest be reported? Also, please delete the comma after "complete."

The phrase "to a fish dealer licensed under G.S. 113-169.3" has been added on line 12. A person subject to the requirements in Paragraph (b) shall report their harvest to a

Travis Wiggs
Commission Counsel
Date submitted to agency: 6/14/24

fish dealer, who in turn records the harvest as set out in Subparagraphs (b)(1) and (b)(2), so "how" the person reports is by providing information to the fish dealer, which has been clarified in lines 13-14. The comma after "complete" has been retained due to the other amendments that were needed to address the request.

In (b)(1), I don't see any "reporting" requirements in G.S. 113-168.2. I only see "recording" requirements in subsection (i). Please confirm if your citation is accurate.

The citation is accurate. In lines 15 and 17, "reporting requirements" has been changed to "recording requirements".

In line 12, should the "and" after the semicolon be changed to "or"?

The conjunction "and" is correct. Both fish that are sold and fish harvested but not sold shall be reported.

In (b)(2) line 14, is there a reason to use the language "in the same manner as provided...for a transaction" instead of "in Rule .0114 of this Section" as was done in subsection (1)? Is there a distinction that makes it necessary to use different language?

Yes, there is a distinction. The requirements under G.S. 113-168.2 and 15A NCAC 03I .0114 currently apply only to fish sold to a fish dealer. Fish harvested but not sold are required to be reported, but the mechanism was not specified in the session law. Rather than creating a duplicative reporting system, this rule requires commercial fishers to use the existing "trip ticket" system that otherwise would only apply to fish that are sold. The distinct language in subsection (2) was deliberate in order to require the use of the same method even though the referenced statute and rule only refer to fish that are sold.

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: Marine Fisheries Commission

RULE CITATION: 15A NCAC 03I .0124 (Temporary)

DEADLINE FOR RECEIPT: Thursday, June 20, 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 line 4, replace "Pursuant to" with "Under" for clarity. "Under" is more accurate since "harvest" is not defined in G.S. 113-170.3.

Completed

In line 5, will the phrase "reduction of such fish to possession" be clear to your regulated public? Who will have "possession" of the fish once they're reduced? The vessel's captain, first mate, deckhands, or anglers may all be involved in catching fish.

The text has been amended to change "reduction of such fish to possession" to "reducing it to permanent possession" as found in the WRC's rule (see line 11 in 15A NCAC 10C .0218).

In (a)(1), should "the" shore be changed to "any" shore?

Completed

In (a)(2), the phrase "at the moment a person is no longer engaged in fishing" seems amorphous. What if someone catches a fish, stops briefly, then resumes fishing? When is the harvest "complete" for the caught fish? The timing of when the harvest is complete is important for compliance with subsection (b) of this Rule.

The text has been amended to change "at the moment a person is no longer engaged in fishing" to "when the person's fishing gear is stowed and no longer in use." The MFC defines "use" in 15A NCAC 03I .0101.

In (b) line 9, please add "as defined in 15A NCAC 03I .0123(a)," after "harvest."

The harvest referenced in line 9 is defined in Paragraph (a) of 03I .0124, so this clarification has been added to the text. (The same clarification was made in 03I .0123, pointing to Paragraph (a) of 03I .0123.)

Travis Wiggs

Commission Counsel

Date submitted to agency: 6/14/24

In line 10, add an “s” to “Harvest.”

Making this plural would be inconsistent with numerous other MFC rules that refer to "harvest" singularly and would be confusing to stakeholders, so the text was left intact.

In (b) lines 10-11, is there another MFC rule related to the electronic reporting of harvests? Is “required by the Division of Marine Fisheries” necessary to include? The public already knows this since your agency has adopted this Rule.

The text has been simplified by striking "by either electronic reporting means required by the Division of Marine Fisheries" and adding "by using" so the sentence reads: "Harvest shall be reported ~~by either electronic reporting means required by the Division of Marine Fisheries~~ online at <https://www.ncmarinefisheries.net>, or by using a Division-issued report card."

In line 11, does your agency characterize the “Division-issued report card” as a “form” under G.S. 150B-2(8d)? Are the contents of the “report card” described in another Rule or in a statute?

No. The text has been clarified to show the report card is simply the paper version of what is required to be reported online, to increase accessibility to reporting mechanisms for regulated stakeholders. The harvest data to be reported online and by using the report card are listed in Subparagraphs (b)(1) through (b)(7) of this Rule.

In lines 11-12, add “in accordance with 15A NCAC 03I .0123” after “complete.”

The phrase "in accordance with Paragraph (a) of this Rule" has been added after "complete". (Reference to 15A NCAC 03I .0123 would connect the requirements of this non-commercial rule with the commercial rule. The same type of clarification was made to 03I .0123, also referring to paragraph (a) of that rule.)

In line 13, consider replacing the comma after “complete” with a period. Delete “except” and start the sentence with “When”.

Completed

In (b)(1) line 16, please spell out “N.C.”.

Completed

In (b)(1), is the “person” referred to the individual who harvested the fish? Please make this clear for the regulated public.

Completed

*In line 17, add “the zip code of their **primary** residence” after “and”.*

Completed

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

Travis Wiggs
Commission Counsel
Date submitted to agency: 6/14/24

1 15A NCAC 03I .0123 is adopted under temporary procedures with changes as follows:

2
3 **15A NCAC 03I .0123 COMMERCIAL HARVEST REPORTING REQUIREMENTS**

4 (a) ~~Pursuant to Under~~ G.S. 113-170.3 and for the purpose of this Rule, "harvest" shall mean the catching or taking of
5 a fish ~~by any means, followed by a reduction of such fish to~~ and reducing it to permanent possession. Harvest shall be
6 deemed complete:

7 (1) if a vessel is used, when fish reach ~~the any~~ shore or a structure connected to the shore; or

8 (2) if a vessel is not used, ~~at the moment a person is no longer engaged in fishing when the person's~~
9 fishing gear is stowed and no longer in use.

10 (b) Any person holding a commercial fishing license engaged in a commercial fishing operation who completes the
11 ~~harvest harvest~~, as defined in Paragraph (a) of this Rule, of any fish in coastal or joint fishing waters shall report that
12 harvest to a fish dealer licensed under G.S. 113-169.3 within 48 hours of harvest being complete, in accordance with
13 Paragraph (a) of this Rule, by providing information to the fish dealer in accordance with Paragraph (b) of Rule .0114
14 of this Section so the fish dealer can report the harvest as follows:

15 (1) for fish sold, harvest shall be reported in accordance with the ~~reporting recording~~ requirements in
16 G.S. 113-168.2 and recordkeeping requirements in Rule .0114 of this Section; and

17 (2) for fish harvested but not sold, harvest shall be reported in accordance with the ~~reporting recording~~
18 requirements in G.S. 113-168.2 and in the same manner as provided in Rule .0114 of this Section
19 for a transaction.

20 (c) The requirements of this Rule shall be effective in accordance with the schedule in S.L. 2023-137, s. 6(f).

21
22 *History Note: Authority G.S. 113-134; 113-170.3; 113-181; 113-182; 143B-289.52;*

23 *Temporary Adoption Eff. XXXXXX, 2024.*

1 15A NCAC 03I .0124 is adopted under temporary procedures with changes as follows:

2
3 **15A NCAC 03I .0124 NON-COMMERCIAL HARVEST REPORTING REQUIREMENTS**

4 (a) ~~Pursuant to Under~~ G.S. 113-170.3 and for the purpose of this Rule, "harvest" shall mean the catching or taking of
5 a fish ~~by any means, followed by a reduction of such fish to~~ and reducing it to permanent possession. Harvest shall be
6 deemed complete:

7 (1) if a vessel is used, when fish reach ~~the any~~ the shore or a structure connected to the shore; or

8 (2) if a vessel is not used, ~~at the moment a person is no longer engaged in fishing when the person's~~
9 fishing gear is stowed and no longer in use.

10 (b) Any person, other than a person holding a commercial fishing license engaged in a commercial fishing operation,
11 who completes the ~~harvest harvest, as defined in Paragraph (a) of this Rule,~~ of a flounder, red drum, spotted seatrout,
12 striped bass, or weakfish in coastal or joint fishing waters shall report that harvest. Harvest shall be reported ~~by either~~
13 electronic reporting means required by the Division of Marine Fisheries online at <https://www.ncmarinefisheries.net>,
14 or by using a Division-issued report card, card containing the same information as is required to be reported online,
15 as listed in Subparagraphs (b)(1) through (b)(7) of this Rule. Electronic reports shall be submitted at the time harvest
16 ~~is complete. complete, in accordance with Paragraph (a) of this Rule.~~ Division-issued report cards shall be completed
17 at the time harvest is complete and submitted electronically to the Division by midnight the day after harvest is
18 ~~complete, except when complete. When~~ the day after harvest is complete is a Sunday or a federal holiday, electronic
19 submission of a report card is due no later than midnight on the first day that is not a Sunday or a federal holiday.
20 Harvest data to be reported shall include:

21 (1) ~~person's valid N.C. North Carolina fishing license number, number of the person who harvested the~~
22 fish, or if a that person does not have a valid N.C. North Carolina fishing license number, that
23 person's first name, last name, and zip code of primary residence;

24 (2) date of harvest;

25 (3) species identification;

26 (4) number of each species;

27 (5) species length, if applicable;

28 (6) area of harvest; and

29 (7) type of gear used.

30 (c) The requirements of this Rule shall be effective in accordance with the schedule in S.L. 2023-137, s. 6(f).

31
32 *History Note: Authority G.S. 113-134; 113-170.3; 113-181; 113-182; 143B-289.52;*

33 *Temporary Adoption Eff. XXXXXX, 2024.*

Burgos, Alexander N

From: Wiggs, Travis C
Sent: Friday, June 14, 2024 2:42 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: MFC Temp Rules-15A NCAC 03I .0123-4
Attachments: 6_2024_Marine Fisheries Commission Request for Changes.docx

Good afternoon,

I'm the attorney who reviewed the Temporary Rules submitted by the North Carolina Marine Fisheries Commission for the June 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, June 26, 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 close to the meeting. If there are any other representatives from your agency who want to attend virtually, please let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on June 20, 2024.

Thank you.

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

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