

Fiscal Impact Analysis of Proposed Conforming Rule Changes for Shellfish Franchises and Shellfish Leases

Rule Amendments: 15A NCAC 03I .0101, 03O .0201,.0207,.0208,.0210

Name of Commission: N.C. Marine Fisheries Commission

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Impact Summary: State government: Minimal
Local government: No
Federal government: No
Substantial impact: No

AUTHORITY

N.C. Session Laws

S.L. 2019-37, Section 3 AN ACT TO PROVIDE FURTHER SUPPORT TO THE SHELLFISH AQUACULTURE INDUSTRY IN NORTH CAROLINA.

S.L. 2024-32, Section 5.(a) AN ACT TO MAKE VARIOUS CHANGES TO THE AGRICULTURAL LAWS OF THIS STATE.

N.C. General Statutes

G.S. § 113-134. Rules.

G.S. § 113-182. Regulation of fishing and fisheries.

G.S. § 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

G.S. § 113-201.1. Definitions.

G.S. § 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

G.S. § 113-202.1. Water column leases for aquaculture.

G.S. § 113-202.2. Water column leases for aquaculture for perpetual franchises.

G.S. § 113-205. Registration of grants in navigable waters; exercise of private fishery rights.

G.S. § 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

G.S. § 143B-289.52 Marine Fisheries Commission – powers and duties.

Chapter 150B Administrative Procedure Act.

Necessity: According to the Administrative Procedure Act (APA), specifically N.C.G.S. § 150B-19.1(b), the Marine Fisheries Commission (MFC) is charged with reviewing its rules annually to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in N.C.G.S. § 150B-19.1(a). The Division of Marine Fisheries (DMF) identified four MFC rules that contain requirements for franchises (15A NCAC 03O .0201, 03O .0207, 03O .0208, 03O .0210) that are proposed for amendment to align with current statutory authority and DMF procedures for franchises, consistent with N.C. Session Law 2024-32, Section 5.(a). Additionally, a clarifying amendment is proposed in 15A NCAC 03I .0101, Definitions, for Sub-Item (5)(e) for the definition of "holder".

I. Background

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. General Statutes (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 spanning 515.72 acres of bottom 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 shellfish franchises. The MFC's authority over such deeded rights is limited. Of the 49 shellfish franchises, 13 franchises (equating to 68.63 acres) are located in shellfish closure area and thus are not operational. The remaining 36 shellfish franchises are not within a shellfish closure area and could be used for private shellfish harvest/ production if an Aquaculture Operation Permit (AOP) is acquired from the DMF. Only nine shellfish franchise holders also hold an AOP. The nine operational franchises are owned by eight individuals and span 257.62 acres.

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, which are described in this report.

II. Proposed Rule Changes

15A NCAC 03I .0101

The proposed amendment to the term "Holder" clarifies the distinction between persons issued a license, permit, or shellfish lease and those possessing a shellfish franchise. Currently, MFC Rule

15A NCAC 03I .0101(5)(e) defines "Holder" as someone lawfully issued a license, permit, franchise, lease, or assignment. Since franchises are granted, not issued, the updated definition will read: ""Holder" means a person who has been lawfully issued in the person's name a license, permit, shellfish lease, or assignment, or who possesses a shellfish franchise recognized pursuant to G.S. 113-206."

15A NCAC 03O .0201

Remove franchises from production requirements to align with statutory authority.

Proposed amendments to 15A NCAC 03O .0201 include the removal of franchises from all production requirements, as they are grounds for termination of a leasehold only. Shellfish franchises recognized under N.C.G.S. § 113-206 are perpetual. DMF has understood that, because franchises are perpetual, it did not have the authority to terminate them, 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. The MFC's authority over these private and protected deeded rights is limited to subjects such as proper marking requirements and permitting of the aquaculture activities occurring.

Clarify how shellfish bottom lease dates align with production requirements under recent statutory changes.

Proposed amendments to 15A NCAC 03O .0201(d),(e),(f), and (g) further clarify the shellfish leases that are held to the production requirements of each paragraph in their respective contracts based on their granting and renewal dates. Separate from the discussion about franchises, the enacting of Session Law 2019-37 also changed the annual production requirements for active shellfish leases, effective after July 1, 2019. The newly created production requirements, therefore, apply to new leases granted after July 1, 2019 and any leases renewed after July 1, 2019. The corresponding production requirements are found in 15A NCAC 03O .0201(f) and (g). The 10-year contracts for active leases that were originally granted on or before July 1, 2019 and have not yet been renewed since July 1, 2019 still reflect the previous production requirements in 15A NCAC 03O .0201(d) and (e).

Clarify the process and criteria by which DEQ determines eligibility to hold additional shellfish lease acreage in accordance with statute.

Proposed amendments to 15A NCAC 03O .0201(a) and (i) further clarify the authority for determining eligibility and the time at which eligibility is determined. Proposed changes also clarify to whom the eligibility determination would apply and that water column amendments are considered additional acreage.

Table 1 summarizes the scenarios when a person would be subject to 15A NCAC 03O .0201(i). The shellfish leasing process outlined in N.C.G.S. § 113-202, N.C.G.S. § 113-202.1, and N.C.G.S. § 113-202.2, establishes the Secretary of the Department of Environmental Quality as the leasing authority. N.C.G.S. § 113-202.1 and N.C.G.S. § 113-202.2 enable a water column amendment superjacent to existing or new bottom leases and to franchises, respectively. These

amendments are considered legally distinct and result in an additional shellfish lease contract for the water column lease, though the water column cannot extend outside of the footprint of the bottom lease or franchise.

Table 1. Summary of scenarios for shellfish bottom leases, shellfish franchises, and water column amendments when a person would be subject to 15A NCAC 03O .0201(i). Note that the proposed amendments to Rule 03O .0201 will not change how the rule is currently being implemented. Rather, the amendments will add clarity and align with existing statutes and practices as presented in Table 1.

Subject to 15A NCAC 03O .0503(i)
Current shellfish bottom lease holder applying for another shellfish bottom lease
Current shellfish bottom lease holder applying for water column amendment
Current shellfish franchise holder, who is also a shellfish bottom lease holder, applying for a water column amendment to their franchise
Current shellfish franchise holder with a water column amendment to their franchise applying for a shellfish bottom lease
Current holder of more than one shellfish franchise with at least one water column amendment to their franchise applying for an additional water column amendment to a franchise
Not subject to 15A NCAC 03O .0503(i)
Current shellfish bottom lease holder (with or without a water column amendment) who comes into possession of a shellfish franchise
Current shellfish franchise holder who does not hold a shellfish bottom lease or water column amendment applying for a water column amendment to their franchise
Current shellfish franchise holder (with or without a water column amendment) who comes into possession of an additional shellfish franchise (with or without a water column amendment)

15A NCAC 03O .0207

15A NCAC 03O .0208

Update rules to reflect statutory authority as it relates to franchises and provide clarity.

As discussed for 15A NCAC 03O .0201, franchises are perpetual and not subject to termination. Proposed amendments to 15A NCAC 03O .0207 include the removal of franchises from all requirements surrounding production reports since compliant production reports relate to procedures for termination. Proposed amendments to 15A NCAC 03O .0208 align existing rule language with the 2024 Session Law by eliminating references to franchises.

15A NCAC 03O .0210

Remove time limit by which a franchise holder must submit their initial Shellfish Management Plan after recognition of a valid chain of title and make conforming statutory changes.

Proposed amendments to 15A NCAC 03O .0210 clarify the proper activation of a shellfish franchise as enabling the permitting of the franchise, remove the time limit of 30 days following activation, and remove the method for evaluating production of a franchise since franchises are perpetual and not subject to termination. To conduct aquaculture operations on a shellfish

franchise that has not previously conducted operations, the franchise must be activated to ensure staff can verify proper shellfish franchise location, determine required marking poles, and confirm proposed gear aligns with gear allowances for shellfish franchises. Shellfish franchise activation, however, is dependent upon clarity of the location provided in survey language, staff time, and other factors that may increase the timeline required for activation. Once activated and confirmed for compliance, a shellfish franchise can receive an Aquaculture Operation Permit as set forth in 15A NCAC 03O .0503. More franchise acreage cannot be granted, but current franchises, operational or not, can be transferred and/or become operational through the above-described process.

III. Fiscal Analysis

- The proposed amendments are designed to align DMF rules with North Carolina law, existing DMF practices, and deed conditions. Specifically, the amendments update planting and harvesting requirements for franchises and leases to ensure consistency with North Carolina law.
- None of the changes will impose new requirements on franchise holders or lease holders. As such, DMF does not anticipate these amendments to create measurable economic impacts for stakeholders.
- Compared to the current regulatory baseline, no procedural adjustments or additional costs to the state are expected.
- By standardizing terminology across rules and laws, the amendments promote clarity and operational efficiency for both DMF staff and stakeholders. While these benefits are difficult to quantify, they may lead to minor administrative efficiencies.
- The proposed rule changes will not affect local governments.

Appendix: Proposed Rules

15A NCAC 03I .0101 is proposed for amendment as follows:

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

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

(1) enforcement and management terms:

- (a) "Commercial quota" means total quantity of fish allocated for harvest by commercial fishing operations.
- (b) "Educational institution" means a college, university, or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of Environmental Quality Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.
- (c) "Internal Coastal Waters" or "Internal Waters" means all Coastal Fishing Waters except the Atlantic Ocean.
- (d) length of finfish:
 - (i) "Curved fork length" means a length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) "Fork length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (iii) "Pectoral fin curved fork length" means a length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.
 - (iv) "Total length" means a length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) "Nongovernmental conservation organization" means an organization whose primary 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;

- (ii) a state or federal agency charged with the management of marine or estuarine resources; or
- (iii) a professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Sub-items (j)(i) and (ii) of this Item.
- (2) fishing activities:
- (a) "Aquaculture operation" means an operation that produces artificially propagated stocks of marine or estuarine resources, or other non-native species that may thrive if introduced into Coastal Fishing Waters, or obtains such stocks from permitted sources for the purpose of rearing on private bottom (with or without the superadjacent water column) or in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
- (i) food;
- (ii) predator protection;
- (iii) salinity;
- (iv) temperature controls; or
- (v) water circulation, utilizing technology not found in the natural environment.
- (b) "Attended" means being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (c) "Blue crab shedding" means the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
- (i) food;
- (ii) predator protection;
- (iii) salinity;
- (iv) temperature controls; or
- (v) water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (d) "Depurate" or "depuration" has the same meaning as defined in the 2019 revision of the NSSP Guide for the Control of Molluscan Shellfish, Section I: Purpose and Definitions. This definition is incorporated by reference, not 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.

- 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, 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~~, 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 to take or deal in marine fisheries resources, 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 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 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) "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) "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.
- (n) "Transaction" means an act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
- (o) "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) "Trip ticket" means paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

History Note: Authority G.S. 113-134; 113-174; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;

1 *Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;*
2 *Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;*
3 *Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;*
4 *Amended Eff. August 1, 2000;*
5 *Temporary Amendment Eff. August 1, 2000;*
6 *Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December*
7 *1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001;*
8 *Readopted Eff. June 1, 2022;*
9 *Amended Eff. (Pending legislative review of 15A NCAC 03O .0503); March 24, 2025.*

1 15A NCAC 03O .0201 is proposed for amendment as follows:

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

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~~

~~or franchise-lease.~~ Shellfish transplanted between shellfish leases ~~or franchises~~ shall be credited as planting effort on only one ~~lease or franchise-lease.~~

(3) production information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. Shellfish bottom leases ~~and franchises~~ granted on or before July 1, 2019 shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance. Shellfish bottom leases ~~and franchises~~ granted after July 1, 2019 and shellfish water column leases shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 113-202.2 to be deemed in compliance.

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

(5) in determining production ~~and marketing~~ averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

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

(B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.

(6) production rate averages shall be computed irrespective of transfer of the shellfish ~~lease or franchise-lease.~~ The production rates shall be averaged for the following situations using the time periods described:

(A) for an initial shellfish bottom ~~lease or franchise-lease,~~ over the consecutive full calendar years remaining on the bottom lease ~~or franchise-contract~~ after December 31 following the second anniversary of the initial bottom ~~lease or franchise-lease;~~

(B) for a renewal shellfish bottom ~~lease or franchise-lease,~~ over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease ~~or franchise-term~~ and ending December 31 of the final year of the current bottom lease ~~or franchise-contract;~~

(C) for a shellfish water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease;

or

(D) for a shellfish bottom lease ~~or franchise-~~issued an extension period under Rule .0208 of this Section, over the most recent five-year period.

(7) in the event that a portion of an existing shellfish lease ~~or franchise-~~is obtained by a new lease ~~or franchise-~~holder, the production history for the portion obtained shall be a percentage of the originating lease ~~or franchise-~~production equal to the percentage of the area of lease ~~or franchise-~~site obtained to the area of the originating ~~lease or franchise-lease.~~

(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 to hold additional shellfish lease acreage, persons holding any acres under a shellfish lease ~~or franchise-~~shall meet the following requirements ~~established in:~~ at the time of submitting a shellfish lease application for additional shellfish 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.

15A NCAC 03O .0207 is proposed for amendment as follows:

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

- (a) The holder or holders of a shellfish lease ~~or franchise~~ shall provide an annual production report to the Division of Marine Fisheries by March 31 of each year showing the amounts of material planted, purchased, and harvested; where and when the material was obtained; and when the material was planted in accordance with Rules .0201 and .0202 of this Section. The report shall include documentation of purchased seed in accordance with Rule .0201 of this Section.
- (b) The Division shall provide reporting forms annually to each shellfish lease ~~or franchise~~ holder to be used for the annual production report.
- (c) Failure by the holder or holders of the shellfish lease ~~or franchise~~ to submit the required annual production report or filing an incomplete report or a report containing false information constitutes grounds for termination as set forth in Rule .0208 of this Section.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; ~~113-206;~~
143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. June 1, ~~2022~~2022;
Amended Eff. April 1, 2026.*

15A NCAC 03O .0208 is proposed for amendment as follows:

15A NCAC 03O .0208 TERMINATION PROCEDURES FOR SHELLFISH LEASES ~~AND FRANCHISES~~

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

(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 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 of failure to utilize the lease on a continuing basis for the commercial production of shellfish may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director or the Fisheries Director's designee received prior to the expiration of the lease term that documents one of the following occurrences caused or will cause the lease ~~or franchise~~ holder to fail to meet lease requirements:

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

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

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

Eff. January 1, 1991;

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

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

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

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

Amended Eff. April 1, 2026.

15A NCAC 03O .0210 is proposed for amendment as follows:

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

- (a) A franchise holder desiring a permit from the Division of Marine Fisheries to conduct shellfish aquaculture on their franchise shall submit a Shellfish Management Plan, prepared in accordance with the standards for a Shellfish Lease Management Plan in Rule .0202 of this Section, shall be provided to the Division of Marine Fisheries within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.
- (b) The Shellfish Management Plan requirements in Paragraph (a) of this Rule and all other requirements and conditions of this Section affecting management of franchises shall apply to all valid franchises.
- ~~(c) Commercial production requirements for franchises shall be identical to that required for shellfish bottom leases in accordance with Rules .0201 and .0207 of this Section averaged over the most recent three year period after January 1 following the second anniversary of the dates of recognition of claims as valid franchises and continuing throughout the term of Shellfish Management Plans required in Paragraph (a) of this Rule.~~

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.2; 113-205; 113-206; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; September 1, 1991;
Readopted Eff. June 1, 2022-2022;
Amended Eff. April 1, 2026.*