

## TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03O .0112 and amend the rules cited as 15A NCAC 03J .0304; 03M .0202; 03O .0101, .0402, .0404, .0501, .0503; 03Q .0107.*

**Proposed Effective Date:** July 1, 2008

**Public Hearing:**

**Date:** February 19, 2008, Tuesday

**Time:** 7:00 p.m.

**Location:** DENR Regional Office, 942 Washington Square Mall, Washington, NC 27889

**Public Hearing:**

**Date:** February 21, 2008, Thursday

**Time:** 7:00 p.m.

**Location:** UNCW Center for Marine Science, 5600 Marvin K. Moss Lane, Wilmington, NC 28409

**Reason for Proposed Action:**

**15A NCAC 03J .0304** – Amendments to this rule are proposed to create a season for the use of electrical fishing devices in joint waters of the Cape Fear River, in order to protect sunfish populations.

**15A NCAC 03M .0202** – The 2004 Estuarine Striped Bass Fishery Management Plan was approved by the Marine Fisheries Commission and the Wildlife Resources Commission, with an allowance for additional data collection for determining measures to address two specific management actions in the Central Southern Management Area. These management actions are to reduce mortality in the recreational fishery and to reduce discards in the commercial large mesh gill net fishery. In response to the results of the additional data collected, amendments to this rule are proposed to help conserve available spawning stock of striped bass to rebuild the population of the species.

**15A NCAC 03O .0101** – General Statute 113-174.3, regarding the For Hire Blanket Coastal Recreational Fishing License, was modified. This modification requires a change in the current rule in order to clarify certifications that for-hire boat captains must possess and documentation requirements that for-hire boat captains must meet when applying for a For Hire Blanket Coastal Recreational Fishing License.

**15A NCAC 03O .0112** – General Statute 113-174.3, regarding the For Hire Blanket Coastal Recreational Fishing License, was modified. In response, this rule is proposed for adoption in order to clarify all license requirements that a for-hire vessel operator must meet and all conditions that a for-hire vessel operator must abide when engaged in for-hire recreational fishing activities.

**15A NCAC 03O .0402, .0404** – The Fisheries Reform Act (FRA) of 1997 placed a cap on the number of Standard Commercial Fishing Licenses (SCFLs) available to new entrants. In response, the Marine Fisheries Commission (MFC) created a License Eligibility Board. The Board may approve an application for a SCFL if certain criteria are met by the applicant that demonstrate participation in the commercial fishing industry. Since there is a limited number of SCFLs they have acquired a monetary value. Often when individuals transfer a SCFL they are financially compensated by the person receiving the license. Over the last two years there has been an increase in the number of short-term transfers of SCFLs. The majority of these licenses are acquired for the purpose of sale and thus do not meet the spirit of the FRA or the intent of the MFC. Amendments to these rules are needed to address the transfer of SCFLs obtained through the License Eligibility Board.

**15A NCAC 03O .0501** – Proclamation M-12-2006 mandates a For Hire Fishing Permit for vessels that do not possess a For Hire Blanket Coastal Recreational Fishing License for the number of persons on the vessel engaged in for-hire fishing. The proclamation outlines the requirements to obtain the For Hire Fishing Permit. This rule is proposed for amendment to move the For Hire Fishing Permit from proclamation to permanent rule.

**15A NCAC 03O .0503** – Proclamation M-12-2006 mandates a For Hire Fishing Permit for vessels that do not possess a For Hire Blanket Coastal Recreational Fishing License for the number of persons on the vessel engaged in for-hire fishing. The proclamation outlines the specific conditions permitted persons must abide. This rule is proposed for amendment to move the For Hire Fishing Permit specific conditions from proclamation to permanent rule.

**15A NCAC 03Q .0107** – The 2004 Estuarine Striped Bass Fishery Management Plan was approved by the Marine Fisheries Commission and the Wildlife Resources Commission, with an allowance for additional data collection for determining measures to address two specific management actions in the Central Southern Management Area. These management actions are to reduce mortality in the recreational fishery and to reduce discards in the commercial large mesh gill net fishery. In response to the results of the additional data collected, amendments to this rule are proposed to help conserve available spawning stock of striped bass to rebuild the population of the species. Amendments are also proposed to create an area closure for the use of electrical fishing devices downstream of the three locks and dams on the Cape Fear River, to address user conflicts.

**Procedure by which a person can object to the agency on a proposed rule:** If you have any objections to the proposed rules, please forward a typed or handwritten letter indicating your specific reasons for your objections to the following address: NC Division of Marine Fisheries, Catherine Blum, Rulemaking Coordinator, P.O. Box 769, Morehead City, NC 28557

**Comments may be submitted to:** Catherine Blum, P.O. Box 769, Morehead City, NC 28557, phone (252) 808-8013, fax (252) 726-0254, email [catherine.blum@ncmail.net](mailto:catherine.blum@ncmail.net)

Comment period ends: April 1, 2008

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

- State  
 Local  
 Substantive ( $\geq$ \$3,000,000)  
 None

**CHAPTER 03 - MARINE FISHERIES**

**SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES**

**SECTION .0300 – POTS, DREDGES, AND OTHER FISHING DEVICES**

**15A NCAC 03J .0304 ELECTRICAL FISHING DEVICE**

It is ~~lawful-unlawful~~ to take catfish by the use of a hand-operated device generating pulsating electrical current in the Cape Fear River ~~between except from 800 feet downstream of~~ Lock and Dam No. 1 in Bladen County ~~downstream~~ to where the Black River joins the Cape Fear River. ~~River from July 1 to March 1.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

**SUBCHAPTER 03M - FINFISH**

**SECTION .0200 - STRIPED BASS**

**15A NCAC 03M .0202 SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS**

~~(a)~~ The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass ~~in a commercial fishing operation or for recreational purposes~~ in internal coastal ~~waters- waters during the period from October 1 through April 30:~~

- (1) Specify ~~season or seasons- fishing days and times,~~  
(A) ~~for recreational purposes;~~  
(B) ~~for commercial fishing operations from October 1 through April 30,~~
- (2) Specify areas, ~~but shall not include coastal waters of the Cape Fear River,~~
- (3) Specify quantity, ~~except possession shall not exceed:~~
  - (a) ~~more than three fish in any one day in the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201, and~~
  - (b) ~~more than two fish in any one day in the joint and coastal fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.~~
- (4) Specify means/methods,
- (5) Specify size, but the minimum size specified shall not be less than 18 inches total length, and
- (6) Require submission of statistical and biological data.

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

~~(b) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass by hook and line or for recreational purposes in internal coastal waters in order to comply with the management requirements incorporated in the North Carolina Estuarine Striped Bass Plan:~~

- ~~(1) Specify quantity, but shall not exceed possession of more than three fish in any one day, and~~
- ~~(2) Specify size, but the minimum size specified shall not be less than 18 inches total length.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

**SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES**

**SECTION .0100 – LICENSES**

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

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application shall be notarized;
- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
- (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years, except Blanket Coastal Recreational Fishing Licenses;
- (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
- (6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
- (7) For nonresidents, certification of the state of residency;
- (8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- (9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- (10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- (11) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant shall provide valid certification as a North Carolina certified shellfish dealer;
- (12) In addition, for the Ocean Fishing Pier Blanket Coastal Recreation Fishing License, a valid Ocean Fishing Pier License issued in the name of the applicant or copy thereof.
- (13) In addition, for the For Hire Blanket Coastal Recreational Fishing License, the applicant shall provide:
  - (A) A valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and
  - (B) Valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

(b) License to Land Flounder from the Atlantic Ocean.

- (1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
  - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
  - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
  - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
- (2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.
- (3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
- (4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.
- (5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the Morehead City Office of the Division of Marine Fisheries for processing.
- (6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.
- (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:

- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.
- (2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport, or if purchased by mail, a copy thereof.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;
- (2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;
- (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and
  - (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or
  - (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
  - (C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
  - (A) North Carolina voter registration card; or
  - (B) Current North Carolina Driver's License; or
  - (C) Current North Carolina Certificate of Domicile; or
  - (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
  - (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party or person holding a power of attorney;

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

*Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 113-174.4; 143B-289.52.*

#### **15A NCAC 030 .0112 FOR HIRE COASTAL RECREATIONAL FISHING**

(a) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel or a Division of Marine Fisheries For Hire Fishing Permit for the vessel as provided in 15A NCAC 030 .0503(k).

(b) It is unlawful for a For Hire Vessel operator to operate under the For Hire Blanket CRFL without:

- (1) Holding the USCG certification required in 15A NCAC 030 .0101(a)(13);
- (2) Having the For Hire Blanket CRFL for the vessel or copy thereof in possession and ready at hand for inspection; and
- (3) Having current picture identification in possession and ready at hand for inspection.

(c) It is unlawful for the holder of the For Hire Blanket CRFL to fail to participate in and provide complete and accurate information as requested by the Division for biological sampling and survey programs.

(d) It is unlawful to fail to display a current For Hire Blanket CRFL decal mounted on an exterior surface of the vessel so as to be plainly visible when viewed from the port side while engaged in for-hire recreational fishing.

Authority G.S. 113-134; 113-174.3; 143B-289.52.

## SECTION .0400 – STANDARD COMMERCIAL LICENSE ELIGIBILITY

NOTE: 15A NCAC 03O .0402 was published in the September 4, 2007 North Carolina Register, Volume 22, Issue 05, page 293. Proposed amendments to this rule, as published, are shown below in italics and have an earliest effective date of February 1, 2008. Additional proposed amendments to this rule are shown below in regular font.

### 15A NCAC 03O .0402 APPLICATION PROCESS

(a) Application forms for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be available at all offices of the Division of Marine Fisheries and must be submitted to the Morehead City Office of the Division of Marine Fisheries for processing.

~~(b) Applications for determination of eligibility for the Standard Commercial Fishing License Eligibility Pool for the 1999-2000 license year shall be accepted beginning April 1, 1999. All applications received from April 1, 1999 through June 30, 1999, shall be reviewed for eligibility for the 1999-2000 license year.~~

~~(c)~~ Only one application per individual for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be accepted or may be pending at any one time. An applicant may ~~only~~ have only one entry in the eligibility pool at any one time.

~~(d)~~ Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing Licenses Eligibility Pool.

~~(e)~~ If an applicant has died or becomes ineligible and is subsequently selected from the eligibility pool, that license eligibility shall automatically revert to the eligibility pool.

~~(f)~~ Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License may not apply for pool eligibility for two years from the date of the last ~~transfer~~ transfer except as provided in 15A NCAC 03O .0404(3).

~~(g)~~ Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24.

NOTE: 15A NCAC 03O .0404 was published in the September 4, 2007 North Carolina Register, Volume 22, Issue 05, pages 293-294. Proposed amendments to this rule, as published, are shown below in italics and have an earliest effective date of February 1, 2008. Additional proposed amendments to this rule are shown below in regular font.

### 15A NCAC 03O .0404 ELIGIBILITY CRITERIA

In determining eligibility of an application for the Standard Commercial Fishing License Eligibility Pool, the Eligibility Board shall apply the following criteria:

(1) Involvement in Commercial Fishing:

(a) Significant involvement in the commercial fishing industry for three of the last five years; or

(b) Significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; or

~~(c) Greater than 50 percent of the applicant's total annual income per year for at least three years derived from commercial fishing; or~~

~~(d) Greater than 75 percent of the applicant's total annual income for three of the last five years being derived from commercial fishing; or~~

~~(e)~~ In the case of an applicant who ~~has turned is under 16 in the year prior to application, years of age,~~ significant involvement in commercial fishing for two out of the last five years ~~prior to reaching the age of 16~~ with a parent, legal guardian, grandparent or ~~other adult family member; other adult;~~ or

~~(f)~~ Significant ~~family~~ involvement of the applicant's family in commercial ~~fishing for the last five years fishing.~~ For the purpose of this Sub-item, family shall include mother, father, brother, sister, spouse, children, grandparents or legal guardian.

For the purposes of this Rule, significant involvement means persons or corporations who are engaged in the actual taking of ~~fish, fish for sale,~~ from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer ~~or the dealer's employees~~ who purchases fish at the point of ~~landing or their employees at the point of~~ landing. Significant involvement does not include activities such as those who transport fish from the point of landing; those who sell or make commercial or recreational fishing gear; those who operate bait and tackle shops unless they are engaged in the actual taking of bait for sale; or those who work in fish markets or crab picking operations.

(2) Compliance with Applicable Laws and Regulations:

(a) The applicant shall not have any licenses, endorsements or commercial fishing vessel registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; or

- (b) If selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, endorsements or registrations or the right to hold such issued by the Division of Marine Fisheries are suspended or revoked; or
- (c) Four convictions within the last three years or the number of convictions which would cause suspension or revocation of license, endorsement, or registration within the last three years shall result in the application being denied; or
- (d) A record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool, the term convictions shall include but not be limited to any conviction for violation of any provision of ~~G.S. 113-Chapter 113 of the North Carolina General Statutes~~ and any rule implementing or authorized by such statutes; any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such statute; any conviction of ~~G.S. 75A-Chapter 75A of the North Carolina General Statutes~~ and any rule implementing or authorized by such statutes; any conviction for violation of any provision of Article 7 of ~~G.S. 143B-Chapter 143B of the North Carolina General Statutes~~ and any rule implementing or authorized by such statutes; any conviction of resist, obstruct, or delay involving a Marine Patrol Officer or Wildlife Officer under G.S. 14-223; and any conviction involving assaultive behavior toward a Marine Patrol Officer or other governmental official of the Department of Environment and Natural Resources or the Wildlife Commission.

Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.

- ~~(3)~~ (3) [The responsible party shall not have transferred a Standard Commercial Fishing License granted by the Eligibility Board.](#)
- ~~(3)(4)~~ (3)(4) All applicants for the Standard Commercial Fishing License Eligibility Pool must meet all other statutory eligibility requirements for the Standard Commercial Fishing License.

*Authority G.S. 113-134; 113-168.1; 113-168.2; 143B-289.52; S.L. 1998-225, s. 4.24.*

## SECTION .0500 – PERMITS

### 15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
  - (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
  - (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
  - (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
  - (5) For permit applications from business entities, the following documentation is required:
    - (A) Business Name;
    - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
    - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
    - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
    - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
    - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
  - (6) Additional information as required for specific permits.
- (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) Pound Net Permit;
  - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
  - (3) Atlantic Ocean Striped Bass Commercial Gear Permit.
- (c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
  - (2) Permit to Transplant Oysters from Seed Management Areas;
  - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
  - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
  - (5) Depuration Permit.
- (d) A permittee shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
  - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
  - (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) Application for an Atlantic Ocean Striped Bass Commercial Gear Permit must be made prior to November 1 of each year. A person shall declare one of the following gears for an initial Atlantic Ocean Striped Bass Commercial Gear Permit and at intervals of three consecutive license years thereafter:
    - (A) gill net;
    - (B) trawl; or
    - (C) beach seine.

For the purpose of this Rule, a beach seine is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place.

Gear declarations are binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.
  - (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.
  - (3) The annual, nonrefundable permit fee is ten dollars (\$10.00).
- (g) For Hire Fishing Permit:
- (1) The permittee shall hold a valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers;
  - (2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.
- ~~(g)(h)~~ Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- ~~(h)(i)~~ A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.
- ~~(i)(j)~~ The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:
- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
  - (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
  - (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- ~~(j)(k)~~ The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.
- ~~(k)(l)~~ Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.
- ~~(l)(m)~~ To renew a permit, the permittee shall file a certification that the information in the original application is still valid, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.
- ~~(m)(n)~~ For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.
- ~~(n)(o)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
- ~~(o)(p)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- ~~(p)(q)~~ Permit applications shall be available at all Division Offices.

*Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.*

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

##### **(a) Horseshoe Crab Biomedical Use Permit:**

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of

percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

- (2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
  - (i) Atlantic Ocean;
  - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
  - (iii) The joint and coastal fishing waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
- (B) No permittee shall possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in 15A NCAC 03J .0209.

- (4) Atlantic Ocean Flounder Dealer Permit:

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

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

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at [www.nmfs.gov](http://www.nmfs.gov) and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are set forth in 15A NCAC 03J .0107.

(f) Aquaculture Operations/Collection Permits:

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
  - (A) To take marine and estuarine resources from coastal fishing waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
  - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
  - (C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who will be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
- (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
- (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
  - (A) without the required license(s) for such sale;
  - (B) to anyone other than a licensed North Carolina fish dealer; and
  - (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who will be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit shall call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall only be issued in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
  - (A) the application process;
  - (B) permit criteria;
  - (C) basic oyster biology and culture techniques;
  - (D) shellfish harvest area closures due to pollution;
  - (E) safe handling practices;
  - (F) permit conditions; and
  - (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in coastal fishing waters shall result in permit revocation.

(i) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
- (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.

(j) Coastal Recreational Fishing License Exemption Permit:

- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in coastal or joint fishing waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
  - (A) Individuals with physical or mental limitations;
  - (B) Members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
  - (C) Individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal agencies, or instructors affiliated with educational institutions; and

- (D) Disadvantaged youths.
- (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:
  - (A) The name, date(s), time and physical location of the event;
  - (B) Documentation that substantiates local, state or federal involvement in the organized fishing event, if applicable;
  - (C) The cost or requirements, if any, for an individual to participate in the event; and
  - (D) An estimate of the number of participants.

(k) For Hire Fishing Permit:

- (1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in 15A NCAC 03O .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.
- (2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:
  - (A) Holding the USCG certification required in 15A NCAC 03O .0501(g)(1);
  - (B) Having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection;
  - (C) Having current picture identification in possession and ready at hand for inspection.
- (3) It is unlawful for the permittee to fail to notify the Division immediately of any changes to information provided on the permit.
- (4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be plainly visible when viewed from the port side while engaged in for-hire recreational fishing.
- (5) The For Hire Fishing Permit is valid for one year from the date of issuance.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

**SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS**

**SECTION .0100 - GENERAL REGULATIONS: JOINT**

**15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS**

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
  - (a) It is unlawful to possess any striped bass or striped bass hybrid ~~taken by any means which that~~ is less than 18 inches long (total length).
  - (b) It is unlawful to possess striped bass or striped bass hybrids between 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
  - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
  - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint waters of the Cape Fear River.
  - ~~(b)(e)~~ (e) It is unlawful to possess more than one daily creel limit of striped bass or ~~their striped bass~~ hybrids, in the aggregate, per person per day, regardless of the number of management areas ~~fished, fished, and fish possessed by the individual must be in compliance with the size and creel limits for the management area being fished.~~
  - (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
  - ~~(g)~~ (g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.
- (2) Lake Mattamuskeet:
  - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
  - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any ~~net or net~~, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

Authority G.S. 113-132; 113-134; 143B-289.52.

