15A NCAC 03I .0101  DEFINITIONS
All definitions set out in G.S. 113, Subchapter IV and the following additional terms apply to this Chapter:

(1) Enforcement and management terms:
(a) Commercial Quota. Total quantity of fish allocated for harvest by commercial fishing operations.
(b) Educational Institution. 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 Environment and Natural Resources 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. All Coastal Fishing Waters except the Atlantic Ocean.
(d) Length of finfish.
   (i) Curved fork length. 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. 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. 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. 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) Recreational Possession Limit. Restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
(f) Recreational Quota. Total quantity of fish allocated for harvest for a recreational purpose.
(g) Regular Closed Oyster Season. March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
(h) Scientific Institution. 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 Subitems (h)(i) and (ii) of this Item.
(i) Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.

(2) Fishing Activities:
(a) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from permitted sources for the purpose of rearing 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;
utilizing technology not found in the natural environment.

(b) Attended. 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. 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) Depuration. Purification or the removal of adulteration from live oysters, clams, or mussels by any natural or artificially controlled means.

(e) Long Haul Operations. Fishing a seine towed between two vessels.

(f) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.

(g) Possess. Any actual or constructive holding whether under claim of ownership or not.

(h) Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.

(i) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(j) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

(k) Shellfish production on leases and franchises:
(i) The culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
(ii) The transplanting (relay) of oysters, clams, scallops, or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

(l) Swipe Net Operations. Fishing a seine towed by one vessel.

(m) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

(n) Use. Employ, set, operate, or permit to be operated or employed.

(3) Gear:
(a) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.

(b) Channel Net. A net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.

(c) Commercial Fishing Equipment or Gear. All fishing equipment used in Coastal Fishing Waters except:
(i) Cast nets;
(ii) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times.
when in the water, except when it is being retrieved from or lowered to the bottom;

(iii) Dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;

(iv) Gigs or other pointed implements that are propelled by hand, whether or not the implement remains in the hand;

(v) Hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;

(vi) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;

(vii) Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;

(viii) Minnow traps when no more than two are in use;

(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. 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. 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. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

(g) Fyke Net. 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. 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. 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. 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. 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. 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. Dredges, patent tongs, stick rakes, and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
Mesh Length. 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.

Pound Net Set. 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.

Purse Gill Nets. 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.

Seine. 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.

Fish habitat areas. The estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:

(a) Anadromous fish nursery areas. Those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
(b) Anadromous fish spawning areas. 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:
   (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. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
(e) Live rock. 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 (Sabellaids), feather duster and Christmas tree worms (Serpulidae), and sand castle worms (Sabellaids);
   (viii) Mussel banks (Phylum Mollusca: Gastropoda); and
   (ix) Acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
(f) Nursery areas. 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. 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. 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. 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 associated with one or more SAV species and include the sediment within these areas; or
   (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

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

(5) Licenses, permits, leases and franchises, and record keeping:
   (a) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
   (b) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
   (c) For Hire Vessel. As defined by G.S. 113-174, when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
   (d) Holder. A person who has been lawfully issued in his or her name a license, permit, franchise, lease, or assignment.
   (e) Land:
      (i) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
      (ii) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when fish reach the shore or a structure connected to the shore.
      (iii) For recreational fishing operations, when fish are retained in possession by the fisherman.
   (f) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
Logbook. 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.

Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.

New fish dealer. 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.

Office of the Division. Physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island, and Elizabeth City, 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.

Responsible party. 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.

Tournament Organizer. The person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.

Transfer. 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.

Trip Ticket. 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; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993; Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996; Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997; Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2000; Amended Eff. May 1, 2015; April 1, 2014; April 1, 2011; April 1, 2009; October 1, 2008; December 1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001.

15A NCAC 03I .0102 TEMPORARY SUSPENSION OF RULES
The Fisheries Director is authorized to suspend, in whole or in part, until the next meeting of the Marine Fisheries Commission, or for a lesser period, the operation of any rule of the Marine Fisheries Commission regarding coastal fisheries which may be affected by variable conditions.


15A NCAC 03I .0103 CONFISCATION AND DISPOSITION
The Fisheries Director is directed to establish administrative procedures for the summary disposition of confiscated live or perishable fish, not inconsistent with the provisions of G.S. 113-137(d). In so doing, he may require inspectors to obtain and file receipts for any fish so disposed of.
15A NCAC 03I .0104  INTRODUCE, TRANSFER OR HOLD IMPORTED MARINE AND ESTUARINE ORGANISMS

(a) In order to protect the marine and estuarine resources of North Carolina from unacceptable risks from predators, pests, parasites, and disease, it is unlawful, without first obtaining a permit from the Fisheries Director or without obtaining live marine and estuarine organisms from a permit holder:

(1) To place into the coastal fishing waters of the state live marine and estuarine organisms not native to the state. For the purpose of this Rule, this action is an introduction.

(2) To place into the coastal fishing waters of the state live marine and estuarine organisms which are native but which originated outside the State's boundaries. For the purpose of this Rule, this action is a transfer.

(3) To hold or maintain any live marine or estuarine organism imported into the state in a quarantine or isolation system for live bait or use in an aquaculture operation as defined in 15A NCAC 03I.0101.

(4) To sell for bait any live marine or estuarine organism imported into the state.

(b) Any person desiring to obtain a Permit to Introduce, Transfer or Hold Imported Marine and Estuarine Organisms must make written application to the Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557-0769. In order for the Fisheries Director to determine the level of risk to any native marine resource or the environment, the applicant shall provide:

(1) A certification from a pathologist that a sample of 60 organisms from proposed shipments are disease free or a certification from a governmental veterinary service that the organisms to be shipped were produced in an area or facility free of diseases posing a risk to North Carolina's estuarine resources, or their environment, as determined by the Fisheries Director; and

(2) A certification from a biologist or veterinarian that macroscopic and microscopic examination indicates the shipment contains only those species identified on the permit application.

(c) The Fisheries Director shall require disinfection, quarantine or destruction of organisms and transfer materials as a condition of the permit, upon finding the importation poses a risk to North Carolina's estuarine resources, or their environment.

(d) The Fisheries Director may hold public meetings prior to granting permits for activities specified in Paragraph (a) of this Rule to gather information concerning risks to native marine resources or the environment.

15A NCAC 03I .0105  LEAVING DEVICES UNATTENDED

(a) It is unlawful to leave stakes, anchors, nets, buoys, or floating devices in any coastal fishing waters when such devices are not being employed in fishing operations except as otherwise provided by rule or General Statute.

(b) It is unlawful to leave pots in any coastal fishing waters for more than five consecutive days, when such pots are not being employed in fishing operations, except upon a timely and sufficient showing of hardship as defined in Subparagraph (b)(2) of this Rule or as otherwise provided by General Statute.

(1) Agents of the Fisheries Director may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director must be removed by the individual utilizing the pot within five days of attachment in order to demonstrate that the pot is being employed in fishing operations.

(2) For the purposes of Paragraph (b) of this Rule only, a timely and sufficient showing of hardship in a commercial fishing operation shall be written notice given to the Fisheries Director that a
mechanical breakdown of the owner's vessel(s) currently registered with the Division of Marine Fisheries under G.S. 113-168.6, or the death, illness or incapacity of the owner of the pot or his immediate family, as defined in G.S. 113-168, prevented or will prevent employing such pots in fishing operations more than five consecutive days. The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in coastal fishing waters for five consecutive days without being employed in fishing operations, and shall state, in addition to the following, the number and specific location of the pots, and the date on which the pots will be employed in fishing operations or removed from coastal fishing waters:

(A) in case of mechanical breakdown, the notice shall state the commercial fishing vessel registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, arrangements being made to repair the vessel or a copy of the work order showing the name, address and phone number of the repair facility; or

(B) in case of the death, illness or incapacity of the owner of the pot or his immediate family, the notice shall state the name of the owner or immediate family member, the date of death, the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification of the illness or incapacity.

(3) The Fisheries Director may, by proclamation, modify the five day requirement, if necessary due to hurricanes, severe weather or other variable conditions. Failure to employ in fishing operations or remove from coastal fishing waters all pots for which notice of hardship is received under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule.

(c) It is unlawful to set or have any fishing equipment in coastal fishing waters in violation of this Section or which contains edible species of fish unfit for human consumption.

History Note: Authority G.S. 113-134; 113-137; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; Recodified from 15A NCAC 03I .0005 Eff. December 17, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. July 1, 1999; Amended Eff. September 1, 2005; August 1, 2000.

15A NCAC 03I .0106 SCIENTIFIC, EDUCATIONAL, OR OFFICIAL COLLECTING PERMIT

History Note: Authority G.S. 113-134; 113-169.3; 113-182; 113-261; 143B-289.52; Eff. January 1, 1991; Recodified from 15A NCAC 3I .0006 Eff. December 17, 1996; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 1999; Temporary Repeal Eff. September 1, 2000; Repealed Eff. August 1, 2002.

15A NCAC 03I .0107 ENDANGERED OR THREATENED SPECIES

(a) Pursuant to a cooperative agreement entered into on February 5, 1979, by the Department of Environment and Natural Resources, the Marine Fisheries Commission, and the Wildlife Resources Commission, the Wildlife Resources Commission will exercise regulatory jurisdiction over any species of sea turtle, and their eggs and nests, consistent with designation of such species as endangered or threatened by the U.S. Fish and Wildlife Service. As provided by said agreement, the law enforcement officers of both the Marine Fisheries Division and the Wildlife Resources Commission have jurisdiction to enforce any State laws and rules, including those contained in 15A NCAC 10I, relating to endangered or threatened species of sea turtles and their eggs and nests.

(b) The Fisheries Director may close or restrict by proclamation any coastal waters with respect to taking or attempting to take any or all kinds of marine resources when the method (equipment) used is a serious threat to an endangered or threatened species listed pursuant to 16 USC 1533(c). Copies of this list may be obtained from the Division of Marine Fisheries, PO Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769.

(c) It is unlawful to use any commercial fishing equipment in the sea turtle sanctuary located in the Atlantic Ocean adjacent to Onslow County as described in 15A NCAC 3R .0101 from June 1 through August 31, except that the
Fisheries Director may, by proclamation, modify the sanctuary within the described area and vary implementation between specified dates for the protection of the sea turtle population.

**History Note:** Authority G.S. 113-132; 113-134; 113-134.1; 113-182; 113-189; 143B-289.52; Eff. January 1, 1991; Recodified from 15A NCAC 3I .0007 Eff. December 17, 1996; Amended Eff. July 1, 1999; May 1, 1997; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

**15A NCAC 03I .0108 OCEAN FISHING PIERS**

(a) It is unlawful to fish with nets of any kind or from boats within the zone adjacent to any ocean fishing pier meeting the requirements of G.S. 113-185(a), if such zone is marked by one of the following methods or a combination of methods:

1. Yellow range poles at least three inches in diameter and extending not less than six feet above the surface of the ground, and which are parallel to the pier and identified by signs with the name of the pier printed in letters at least three inches high; or

2. Buoys, which shall be yellow in color and not less than nine inches in diameter and extend no less than three feet above the surface of the water.

(b) It is unlawful to define a zone that extends more than 750 feet from the pier. When a marking system defines a smaller area than authorized, the limitations on fishing activities shall apply within the marked zone. When the marking system does not include buoys placed seaward of the pier's offshore end, the zone protected under G.S. 113-185 shall be limited to the areas parallel to the sides of the pier and shall include no area seaward of the offshore end of the pier.

(c) Owners of qualifying ocean piers shall be responsible for complying with all applicable local, state and federal regulations for marking systems.

**History Note:** Authority G.S. 113-134; 113-181; 113-182; 143B-289.52; Eff. January 1, 1991; Recodified from 15A NCAC 3I .0008 Eff. December 17, 1996.

**15A NCAC 03I .0109 ARTIFICIAL REEFS AND RESEARCH SANCTUARIES**

(a) The Fisheries Director may, by proclamation, prohibit or restrict the taking of fish and the use of any equipment in and around any artificial reef or research sanctuary. Any closure or restriction is subject to the following conditions:

1. Artificial reefs shall not be closed or restricted beyond 500 yards in the Atlantic Ocean or 250 yards in internal coastal waters. Artificial reefs shall be marked as near center as feasible by one readily identifiable official buoy and distances for closures or restrictions shall be measured from such buoy.

2. Any closure or restriction shall be for no more than one year, subject to renewal in the discretion of the Fisheries Director.

3. The economic effect of the closure or restriction on fishing interests with respect to the size and location of the area and the nature of the equipment affected shall be considered before such closure is made and findings shall be made in writing which findings shall be available for public inspection at the office of Division of Marine Fisheries in Morehead City.

(b) It is unlawful to engage in any fishing activity, use any equipment, or conduct any other operation which has been prohibited by proclamation issued under this authority.

**History Note:** Authority G.S. 113-134; 113-181; 113-182; 143B-289.52; Eff. January 1, 1991; Recodified from 15A NCAC 3I .0009 Eff. December 17, 1996.

**15A NCAC 03I .0110 MILITARY DANGER ZONES AND RESTRICTED AREAS**

(a) Pursuant to Title 33 United States Code Section 3, the United States Army Corps of Engineers has adopted regulations which restrict access to and activities within certain areas of coastal and inland fishing waters. Federal Rules codified at 33 CFR 334.410 through 334.450 designate danger zones and restricted areas, within North
Carolina coastal waters. These areas are designated in 15A NCAC 03R .0102. Only the applicable military commanders listed in the federal regulations have authority to authorize navigation or fishing access to these designated areas. All military danger zone and restricted area closures shall be enforced by the appropriate federal agency. If reasonable use of these areas by the food fishing industry is allowed or a permit process implemented by the appropriate military authorities to allow access in accordance with 33 U.S.C. Section 3 or the appropriate federal authority allows access to danger zones or restricted areas, all applicable fisheries statutes, N.C. Marine Fisheries Commission rules, and proclamations issued by the Fisheries Director, other than those allowing access, shall apply within these areas.

(b) The military danger zones and restricted areas are shown on navigational charts and specifically described in the Coastal Pilot and the Code of Federal Regulations (CFR). Copies of the CFR provisions are available on the internet at www.access.gpo.gov/nara/cfr/index.html or at the Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557. These areas are also designated in 15A NCAC 3R .0102.

**History Note:** Authority G.S. 113-134; 113-170.3; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; Recodified from 15A NCAC 3I .0010 Eff. December 17, 1996; Amended Eff. August 1, 2004; May 1, 1997; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

**15A NCAC 03I .0111 PERMITS FOR AQUACULTURE OPERATIONS**

**History Note:** Authority G.S. 113-134; 113-182; 143B-289.52; Eff. January 1, 1991; Amended Eff. October 1, 1992; September 1, 1991; Recodified from 15A NCAC 3I .0011 Eff. December 17, 1996; Temporary Repeal Eff. September 1, 2000; Repealed Eff. August 1, 2002.

**15A NCAC 03I .0112 SPÉCIAL PERMIT REQUIRED FOR SPECIFIC MANAGEMENT PURPOSES**

**History Note:** Authority G.S. 113-134; 113-170.3; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Recodified from 15A NCAC 3I .0012 Eff. December 17, 1996; Temporary Repeal Eff. May 1, 2000; Repealed Eff. April 1, 2001.

**15A NCAC 03I .0113 BIOLOGICAL SAMPLING**

It is unlawful for any licensee under Chapter 113, Subchapter IV, of the General Statutes to refuse to allow the Fisheries Director or his agents to obtain biological data, harvest information, or other statistical data necessary or useful to the conservation and management of marine and estuarine resources from fish in the licensee's possession. Such data shall include, but is not limited to, species identification, length, weight, age, sex, number, area of catch, harvest method, and quantity of catch.

**History Note:** Authority G.S. 113-134; 113-170.3; 113-170.4; 113-174.1; 113-182; Eff. October 1, 1992; Recodified from 15A NCAC 3I .0013 Eff. December 17, 1996.

**15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS**

(a) It is unlawful for a fish dealer:

1. To fail to complete accurately and legibly all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;
2. To fail to provide to the Division a Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;
To fail to make paper copies of trip tickets available at the dealer location for inspection by Marine Patrol inspectors;

To fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement shall be notified by the Division via certified mail and within 120 days of receipt shall:
(A) Initiate electronic file transfer of trip tickets; and
(B) Continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;

To fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and

To fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, records, electronic files and accounts for a period of not less than three years.

(b) It is unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:
(1) A current and valid license or permit to sell the type of fish being offered and if a vessel is used, the commercial fishing vessel registration; and
(2) Complete and accurate information on harvest method and area of catch and other information required by the Division, in accordance with G.S. 113-168.2 and 113-169.3.

(c) It is unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing thereon the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped. In the event the fisherman taking the fish is also a dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to dealers are exempt from this Paragraph of this Rule.

(d) It is unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the record keeping requirements in G.S. 113-168.2(i).
(e) It is unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection by Marine Patrol inspectors or other agent of the Fisheries Director written documentation of purchase showing thereon the name of the licensed dealer, name of the purchaser, date of the purchase, and the quantity of each species purchased.
(f) It is unlawful for a holder of a Fish Dealer's License to have fish in possession at a licensed location without written documentation from a licensed fish dealer or a completed North Carolina Marine Fisheries Trip Ticket to show the quantity and origin of all fish.

History Note:  Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 143B-289.52;
Eff. March 1, 1994;
Recodified from 15A NCAC 3I .0014 Eff. December 17, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. June 1, 2013; August 1, 2000.

15A NCAC 03I .0115  REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH

(a) Fish, as used throughout this Rule, is defined in G.S. 113-129(7).

(b) Replacement Costs Distinguished. As it applies to fishes the term "replacement costs" must be distinguished from the “value” of the fish concerned. Except in cases where fish may lawfully be sold on the open market, as with commercially reared species, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only anglers, but conservationists and those to whom the value of fishes is primarily aesthetic, cannot be measured in dollar amounts. The average cost of fish legally taken by anglers including travel and lodging, fishing equipment and bait, excise taxes on equipment, licenses and other fees, may fairly be estimated. This too, however, is a reflection on the value of existing fishery resources rather than a measure of the cost of their replacement. Thus, the relative value of fish species shall be considered only as they may bear on the necessity or desirability of actual replacement.

(c) Determining replacement costs. The replacement costs of species of fishes that have been taken, injured, removed, harmfully altered, damaged, or destroyed shall be determined as follows. The weight of each undersized
fish shall be adjusted to the average weight of a fish on the minimum legal size established by the Marine Fisheries Commission for that species. The replacement cost shall be calculated based on the greater of either:

1. the cost of propagating and rearing the species in a hatchery and the cost of transporting them to areas of suitable habitat; or
2. the average annual ex-vessel value of fish species per pound.

(d) The cost of propagating, rearing and transporting the fish and the average annual ex-vessel value of fish species per pound shall be taken from the Division of Marine Fisheries annual statistical report for the calendar year next preceding the year in which the offense was committed. When the cost of propagating, rearing or transporting a particular species is not available, replacement costs shall be calculated based upon the average annual ex-vessel value of the species. When neither the cost of propagating, rearing or transporting a particular species, nor the average annual ex-vessel value of the species is available, replacement costs shall be determined according to the following factors:

1. whether the species is classified as endangered or threatened;
2. the relative frequency of occurrence of the species in the state;
3. the extent of existing habitat suitable for the species within the state;
4. the dependency of the species on unique habitat requirements;
5. the cost of improving and maintaining suitable habitat for the species;
6. the cost of capturing the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
7. the availability of the species and the cost of acquisition for restocking purposes;
8. the cost of those species which, when released, have a probability of survival in the wild;
9. the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in a hatchery, it is released to the wild.

(e) Replacement costs will be assessed for the following fish:

1. Alewife (River Herring);
2. Amberjacks;
3. Anglerfish (Goosefish);
4. Bluefish;
5. Bonito;
6. Butterfish;
7. Carp;
8. Catfishes;
9. Cobia;
10. Croaker, Atlantic;
11. Cutlassfish, Atlantic;
12. Dolphinfish;
13. Drum, Black;
14. Drum, Red (Channel Bass);
15. Eels;
16. Flounders;
17. Flounders, Fluke;
18. Garfish;
19. Gizzard Shad;
20. Groupers;
21. Grunts;
22. Hakes;
23. Harvestfish;
24. Herring, Thread;
25. Hickory Shad;
26. Hogfish;
27. Jacks;
28. Kingfishes (Sea Mullet);
29. Mackerel, Atlantic;
30. Mackerel, King;
31. Mackerel, Spanish;
32. Menhaden, Atlantic;
(f) Cost of Investigations:

(1) Factors to be Considered. Upon any investigation required as provided by G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of marine and estuarine resources which have been killed, taken, injured, removed, harmfully altered, damaged, or destroyed, the factors to be considered in determining the cost of the investigation are as follows:

(A) the time expended by the employee or employees making the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;

(B) the cost of service to the state of each employee concerned, including annual salary, hospitalization insurance, and the state’s contribution to social security taxes and to the applicable retirement system;
substituence of the investigating personnel, including meals, reasonable gratuities, and lodging away from home, when required;

the cost of all necessary transportation;

the use or rental of boats and motors, when required;

the cost of cleaning or repairing any uniform or clothing that may be damaged, soiled or contaminated by reason of completing the investigation;

the cost of necessary telephonic communications;

any other expense directly related to and necessitated by the investigation.

Computation of Costs. In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual cost of service of the employee and his total annual working hours (2087 hours reduced by holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:

(A) subsistence: the per diem amount for meals, reasonable gratuities, and lodging away from home, not to exceed the then current maximum per diem for state employees;

(B) transportation: total mileage by motor vehicle multiplied by:
   (i) the then current rate per mile for travel by state-owned vehicle; or
   (ii) the then current rate per mile for travel by privately owned vehicle, as applicable;

(C) boat and motor: ten dollars ($10.00) per hour;

(D) uniform and clothing cleaning and repair: actual cost;

(E) telephonic communications: actual cost;

(F) other expenses: actual cost.

History Note: Authority G.S. 113-134; 113-267; 143B-289.52; Eff. March 1, 1995; Recodified from 15A NCAC 3I .0015 Eff. December 17, 1996.

15A NCAC 03I .0116 CORAL AND LIVE ROCK
(a) It is unlawful to harvest or possess aboard a vessel coral or live rock as defined in 15A NCAC 03I .0101.
(b) Live rock and coral shall be returned to the waters where taken.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. March 1, 1995; Recodified from 15A NCAC 3I .0016 Eff. December 17, 1996; Amended Eff. April 1, 2011; May 1, 1997; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

15A NCAC 03I .0117 FISHERY RESOURCE GRANT PROGRAM

History Note: Filed as a Temporary Adoption Eff. September 26, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 113-134; 113-200; 143B-289.52; 1993 (Regular Session 1994), c. 769, s. 27.17; Eff. February 1, 1995; Recodified from 15A NCAC 3I .0017 Eff. December 17, 1996; Temporary Amendment Eff. April 20, 1997; Amended Eff. August 1, 1998; Repealed Eff. January 1, 2000.

15A NCAC 03I .0118 DISPOSAL OF EVIDENCE
It is unlawful for any person to dispose of fish or parts thereof, or other matter in any manner, after any communication or signal from an inspector, or after the approach of an inspector or an enforcement vessel.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Eff. March 1, 1996;
15A NCAC 03I .0119  PROHIBITED FISHING ACTIVITY DUE TO PUBLIC HEALTH OR SAFETY

(a) It is unlawful to possess, sell, or take fish by any method or use any fishing equipment in areas of coastal waters that are closed to fishing by the Marine Fisheries Commission because the areas are determined to pose a public health or safety risk by the State Health Director.

(b) After prior consent of the Marine Fisheries Commission the Fisheries Director may, by proclamation, prohibit or restrict the taking of fish by any method and the use of any fishing equipment in areas of coastal waters that are the subject of warnings or advisories by the State Health Director concerned with dangers or risks to public health or safety. Criteria to be considered for deciding when closures are necessary and when to reopen areas are as follows:

(1) Pfiesteria piscicida outbreaks:
   (A) Closing fisheries:
      (i) Kills: Active fish kills observed for six continuous days.
      (ii) Disease: Disease event observed, with fish showing bleeding ulcerations for six continuous days.
      (iii) Pfiesteria piscicida: Toxic flagellated and amoeboid stages at concentrations of greater than 300 cells per ml in kill areas while fish are dying (if laboratory capability is available). [Note: Basis -more than 100 confirming bioassays of Pfiesteria toxicity, together with supporting field data].
   (B) Opening Fisheries:
      (i) Kills: No active fish kills observed and no documented schools of fish in apparent distress for six continuous days.
      (ii) Disease: No disease event of fish showing bleeding ulcerations of six continuous days.
      (iii) Pfiesteria piscicida: Toxic flagellated and amoeboid stages at concentrations of less than 200 cells per ml following a kill/disease event [if laboratory capability is available]. [Note: Basis - more than 100 confirming bioassays of Pfiesteria toxicity, together with supporting field data].
      (iv) Biological sampling indicating that the kill or disease event has passed, interpreted through the following information:
         (I) Sampling of affecting area or established monitoring sites.
         (II) Observations of catch by fishing gear that may be set or used in the area.
         (III) Species diversity and abundance that has returned to normal levels for the area and season when compared to historic data, if available.

(2) Other Environmental Events:
   (A) Closing fisheries:
      State Health Director determines there is a public health or safety risk.
   (B) Opening fisheries:
      State Health Director determines a public health or safety risk no longer exists.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4;
Temporary Adoption Eff. February 1, 1996;
Eff. June 1, 1996;
Recodified from 15A NCAC 3I.0019 Eff. December 17, 1996;

15A NCAC 03I .0120  POSSESSION OR TRANSPORTATION LIMITS THROUGH STATE WATERS; SALE OF NATIVE SPECIES

(a) It shall be unlawful to possess or transport through State coastal fishing waters any species of fish that is subject to State season, size, or harvest restrictions, regardless whether the species was taken in State or federal waters, unless all fish taken are in compliance with the restrictions for the waterbody or area being fished. If State season, size, or harvest restrictions differ from comparable restrictions pursuant to a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or pursuant to the Magnuson-Stevens Fishery Conservation and
Management Act, or if there are no corresponding federal regulations, the State restrictions shall apply during such periods of possession or transportation.

(b) It shall be unlawful to import native species of fish for sale in the State that do not meet size limits, except as provided in 15A NCAC 03K .0202, .0207, .0305, and 03M .0503.

History Note: Authority G.S. 113-134; 113-170; 113-170.4; 113-170.5; 113-182; 113-182.1; 113-252; 143B-289.52; Temporary Adoption Eff. July 1, 1999; Eff. August 1, 2000; Temporary Amendment Eff. October 1, 2001; Amended Eff. September 1, 2005; April 1, 2003; Readopted Eff. April 1, 2019.

15A NCAC 03I .0121 MAPS AND MARKING
(a) Maps or charts showing the boundaries of areas identified in this Chapter and in proclamations issued by the Fisheries Director are available for inspection at the Morehead City Office of the Division of Marine Fisheries.
(b) The Division of Marine Fisheries shall mark the boundaries of areas identified in this Chapter and in proclamations issued by the Fisheries Director with signs insofar as may be practical. No removal or relocation of any such marker or sign shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such removal or relocation or the absence of any marker or sign affect the applicability of any rule pertaining to any such body of water or portion thereof. Where there is conflict between markers or signs, and boundaries described in this Chapter and in proclamations issued by the Fisheries Director, boundary descriptions shall prevail.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52; Eff. April 1, 2011; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

15A NCAC 03I .0122 USER CONFLICT RESOLUTION
(a) In order to address user conflicts, the Fisheries Director may, by proclamation, impose any or all of the following restrictions:
   (1) specify time;
   (2) specify area;
   (3) specify means and methods;
   (4) specify seasons; and
   (5) specify quantity.
This authority may be used based on the Fisheries Director's own findings or on the basis of a valid request in accordance with Paragraph (b) of this Rule. The Fisheries Director shall hold a public meeting in the area of the user conflict prior to issuance of a proclamation based on his or her own findings.
(b) Request for user conflict resolution:
   (1) Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, NC 28557-0769. A request shall contain the following information:
      (A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;
      (B) identification of the user conflict causing a need for user conflict resolution;
      (C) recommended solution for resolving user conflict; and
      (D) name and address of the person(s) requesting user conflict resolution.
   (2) Within 90 days of the receipt of the information required in Subparagraph (b)(1) of this Rule, the Fisheries Director shall review the information and determine if user conflict resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny the request. If user conflict resolution is necessary, the Fisheries Director or designee shall hold a public meeting in the area of the user conflict. The requestor shall present his or her request at the public meeting.
Following the public meeting as described in Subparagraph (b)(2) of this Rule, the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval a proclamation to the Marine Fisheries Commission that addresses the conflict.

Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of Rule .0102 of this Section terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

History Note: Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52;
Eff. May 1, 2015.