

## SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS, AND MUSSELS

### SECTION .0100 – SHELLFISH, GENERAL

#### 15A NCAC 03K .0101 PROHIBITED ACTIVITIES IN POLLUTED SHELLFISH AREAS

(a) It shall be unlawful to possess, sell, or take oysters, clams, or mussels from areas that have been designated as polluted by proclamation by the Fisheries Director except as provided in Rules .0103, .0104, .0107, and .0401 of this Subchapter. The Fisheries Director shall issue shellfish polluted area proclamations if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have not been met. The Fisheries Director may reopen any such closed area by proclamation if criteria for approved shellfish harvest areas in accordance with 15A NCAC 18A .0900 have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557; 800-682-2632 or 252- 726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops, and mussels to protect the shellfish populations for management purposes or for protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission not specified in Paragraph (a) of this Rule.

(c) It shall be unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina, except as provided in 15A NCAC 03I .0104.

*History Note:* Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. July 1, 1993;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. August 1, 2000;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. October 1, 2008; April 1, 2003;  
Readopted Eff. March 15, 2023.

#### 15A NCAC 03K .0102 RAKES PROHIBITED

It shall be unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

- (1) oysters or scallops; or
- (2) clams in any live oyster bed, or in any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 2008; February 1, 2008;  
Readopted Eff. March 15, 2023.

#### 15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

(a) For the purpose of this Rule, "Shellfish Management Area" shall mean an area that has environmental conditions suitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to improve the propagation of shellfish and has at least one of the following:

- (1) planted cultch;
- (2) existing shell; or
- (3) existing live shellfish.

(b) The Fisheries Director may, by proclamation, designate and modify Shellfish Management Areas based on biological impacts or variable spatial distribution, including shifted material.

(c) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish Management Area.

(d) It shall be unlawful to take shellfish from any Shellfish Management Area that has been closed in accordance with Paragraph (b) of this Rule, except the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may impose any of the following requirements based on biological impacts or user conflicts:

- (1) specify time;

- (2) specify area;
- (3) specify means and methods except as set forth in Paragraph (c) of this Rule;
- (4) specify season;
- (5) specify size;
- (6) specify quantity; and
- (7) specify marking requirements.

*History Note:* Authority G.S. 113-134; 113-182; 113-204; 113.221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003;  
Readopted Eff. March 15, 2023.

#### **15A NCAC 03K .0104 PERMITS FOR RELAYING SHELLFISH FROM POLLUTED AREAS**

- (a) It shall be unlawful to take shellfish from polluted public waters or franchises for planting on shellfish leases and franchises except as authorized by G.S. 113-203. Shellfish lease and franchise holders shall first obtain a relay permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
- (b) The application for a relay permit shall be received by the Division of Marine Fisheries at least 15 days prior to the start of relaying activities.
- (c) All relaying activities, including removal, transport, and planting, shall be monitored and observed by the Division.
- (d) The season for relaying shellfish may occur within a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the following factors:
  - (1) the status of shellfish resources available for harvest from public bottom;
  - (2) surface water temperatures that are below 50° F (10° C), when shellfish relay shall not occur;
  - (3) market factors affecting sale of shellfish from public bottom; and
  - (4) availability of Division of Marine Fisheries staff to monitor and observe the shellfish relaying activity.
- (e) The Fisheries Director, shall close by proclamation any shellfish lease or franchise for which the owner has obtained a permit to relay shellfish from polluted public waters or franchises. The leases and franchises shall remain closed until the Fisheries Director issues a proclamation to reopen the leases and franchises to harvest. The reopening of the leases and franchises shall not occur any sooner than 21 days after the end of the relay season described in Paragraph (d) of this Rule.

*History Note:* Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996; September 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. April 1, 2003;  
Readopted Eff. March 15, 2023.

#### **15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH**

- (a) It shall be unlawful to take oysters or clams from public bottom on Sundays, and scallops from public bottom on Saturdays and Sundays except:
  - (1) during open seasons; and
  - (2) for recreational purposes.
- (b) It shall be unlawful to possess, for recreational purposes, more than:
  - (1) 10 conchs or whelks per person per day, not to exceed 20 conchs or whelks per vessel per day;
  - (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per day; and
  - (3) 100 clams per person per day, not to exceed 200 clams per vessel per day.

*History Note:* Authority G.S. 113-134; 113-169.2; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994; February 1, 1992; September 1, 1991;

*Temporary Amendment Eff. October 9, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Amended Eff. May 1, 1997; March 1, 1996;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. October 1, 2008; August 1, 2000;*  
*Readopted Eff. June 1, 2022.*

**15A NCAC 03K .0106 TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT**

- (a) It shall be unlawful to take oysters or clams between the hours of sunset and sunrise on any day.
- (b) It shall be unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on Sundays or between sunset and sunrise on any day except that in New Hanover, Pender, and Brunswick counties, oysters and clams may be unloaded until two hours after sunset.
- (c) Oysters and clams taken on Sundays from public bottom under the provisions of Rule .0105 of this Section or from shellfish leases and franchises pursuant to G.S. 113-208 shall be exempt from Paragraph (b) of this Rule.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. October 1, 2008; August 1, 2000;*  
*Readopted Eff. June 1, 2022.*

**15A NCAC 03K .0107 DEPURATION OF CLAMS AND OYSTERS**

- (a) It shall be unlawful to take clams or oysters from polluted public waters or franchises of the State for the purpose of depuration except when the harvest will utilize clams or oysters that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division of Marine Fisheries.
- (b) The Fisheries Director, may, by proclamation, impose any of the following restrictions on the harvest of clams or oysters for depuration:
  - (1) specify species;
  - (2) specify areas, except harvest shall not be allowed from designated buffer zones adjacent to sewage outfall facilities;
  - (3) specify harvest days;
  - (4) specify time;
  - (5) specify size;
  - (6) specify quantity;
  - (7) specify harvest methods; and
  - (8) specify record keeping requirements.
- (c) Depuration permits:
  - (1) it shall be unlawful for individuals to harvest clams or oysters from polluted waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina clam or oyster dealers only. Permittees and designees harvesting under Depuration Permits shall have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.
  - (2) in addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, location, and telephone number of the depuration operation where the shellfish will be depurated.
  - (3) clam or oyster dealers desiring to obtain clams or oysters from polluted waters for the purpose of depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.
- (d) Transport of clams or oysters for depuration:
  - (1) clams or oysters harvested from polluted waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the Division.

- (2) clams or oysters harvested from polluted waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the supervision of the Division.
- (e) It shall be unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52; Eff. January 1, 1991; Temporary Amendment Eff. October 1, 2001; Amended Eff. October 1, 2008; April 1, 2003; Readopted Eff. March 15, 2023.*

#### **15A NCAC 03K .0108 DREDGES AND MECHANICAL METHODS PROHIBITED**

- (a) It shall be unlawful to use mechanical methods, except mechanical methods for clamming and mechanical methods for oystering as defined in 15A NCAC 03I .0101, to take shellfish.
- (b) It shall be unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in Rules .0201, .0204, .0302, .0304, .0404, .0501, and .0503 of this Subchapter:
  - (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately;
  - (2) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases and Franchises;
  - (3) in areas designated in Rule .0204 of this Subchapter and 15A NCAC 03R .0103; and
  - (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and Rules .0201, .0302, .0404, .0501, and .0503 of this Subchapter.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52; Eff. October 1, 2008; Readopted Eff. March 15, 2023.*

#### **15A NCAC 03K .0109 SHELLFISH HARVEST TAGS**

Consistent with the requirements of this Rule, it shall be unlawful to possess or sell oysters, clams, or mussels taken in a commercial fishing operation without a harvest tag affixed to each container of oysters, clams, or mussels. Tags shall be affixed by the harvester and remain in place while being transported to a certified shellfish dealer. Harvest tags shall remain attached to the container until the certified shellfish dealer breaks open the container for washing, grading, packing, other processing, or the container is shipped. Once the initial container is broken open or is emptied the harvest tag shall be kept on file, in chronological order, by the certified shellfish dealer for 90 days. It shall be unlawful for the tag to fail to meet the following criteria:

- (1) harvest tags shall be identified as harvest tags. They shall be durable for at least 90 days, waterproof, and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) harvest tags shall be securely fastened to each container in which shellstock is transported. A harvest tag shall remain securely fastened to each container at a certified shellfish dealer until replaced by a dealer tag once the container is broken open for processing or is shipped. Requirements for dealer tags are described in 15A NCAC 18A .0425. Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required harvest and dealer information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) bulk harvest tags may be used when shellfish are harvested from one growing area on a single day by an individual harvester. Multiple containers may be utilized on a wrapped pallet, in a single boat, vehicle, conveyance, or other container, and tagged with a single harvest tag containing the information required in this Rule. The bulk tag shall also include a statement that "All shellstock containers in this lot have the same harvest date and area of harvest.", and include the number of individual containers in the unit or an estimate of the total weight, volume, or count.
- (4) tags shall contain legible information arranged in the specific order as follows:
  - (a) the harvester's name, address, and Shellfish License or Standard or Retired Standard Commercial Fishing License with shellfish endorsement number;

- (b) the date of harvest;
- (c) the most precise identification of the harvest location as is practicable (e.g., Long Bay, Rose Bay), including the State's two initials "N.C." and the growing area designation;
- (d) the shellfish lease or franchise number, if applicable;
- (e) type and quantity of shellfish;
- (f) the following statement in bold, capitalized font: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE, IN CHRONOLOGICAL ORDER, FOR 90 DAYS."; and
- (g) the time of the start of harvest. The time of the start of harvest shall be the time when the first shellfish is initially removed from the water.

*History Note:* Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 143B-289.52;  
 Eff. October 1, 2008;  
 Readopted Eff. March 15, 2023.

**15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND MUSSELS**

(a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance (Model Ordinance) includes requirements for the sale or distribution of shellfish from approved areas or shellfish dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or misbranded during cultivation, harvesting, processing, storage, or transport. To protect public health, the Fisheries Director may, by proclamation, impose requirements of the Model Ordinance as set forth in Paragraph (b) of this Rule on any of the following:

- (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport of:
    - (A) oysters;
    - (B) clams;
    - (C) scallops; and
    - (D) mussels;
  - (2) areas used to store shellfish;
  - (3) means and methods to take shellfish;
  - (4) vessels used to take shellfish; and
  - (5) shellstock conveyances as defined in 15A NCAC 18A .0301.
- (b) Proclamations issued under this Rule may impose any of the following requirements:
- (1) specify time and temperature controls;
  - (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301, or cross-contamination or adulteration of shellfish;
  - (3) specify sanitation control procedures set forth in 21 CFR 123.11;
  - (4) specify Hazard Analysis Critical Control Point (HACCP) requirements set forth in 21 CFR:
    - (A) 123.3 Definitions;
    - (B) 123.6 HACCP Plan;
    - (C) 123.7 Corrective Actions;
    - (D) 123.8 Verification;
    - (E) 123.9 Records; and
    - (F) 123.28 Source Controls;
  - (5) specify tagging and labeling requirements;
  - (6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
  - (7) require sales records and collection and submission of information to provide a mechanism for tracing shellfish product back to the water body of origin; and
  - (8) require product recall and specify recall procedures.

21 CFR 123.3, 123.6-9, 123.11, and 123.28 are incorporated by reference, including subsequent amendments and editions. A copy of the reference material can be found at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-123?toc=1>, at no cost.

(c) 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 15A NCAC 03I .0102

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; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52;  
Eff. April 1, 2014;  
Amended Eff. May 1, 2017;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;  
Amended Eff. August 1, 2024.

#### **15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES**

*History Note:* Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52;  
Eff. May 1, 2015;  
Repealed Eff. March 15, 2023.

### **SECTION .0200 – OYSTERS**

#### **15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT**

- (a) It shall be unlawful to take or possess oysters from public bottom except from October 15 through March 31.
- (b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of oysters:
- (1) specify time;
  - (2) specify area;
  - (3) specify means and methods;
  - (4) specify season within the period set forth in Paragraph (a) of this Rule;
  - (5) specify size, but the minimum size limit specified shall not be less than three inches, unless a smaller minimum size limit is necessary to prevent loss of oysters due to predators, pests, or infectious oyster diseases. In no case shall the minimum size limit be less than two and one-half inches; and
  - (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard U.S. bushels in a commercial fishing operation per day.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. May 1, 2017; October 1, 2008; March 1, 1996; September 1, 1991;  
Readopted Eff. June 1, 2022.

#### **15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS**

- (a) It shall be unlawful to possess oysters that have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by proclamation issued under the authority of Rule .0201 of this Section, or any combination thereof that exceeds a five-percent tolerance limit by volume. Oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken. In determining whether the tolerance limit has been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by law the entire quantity being graded or any portion thereof.
- (b) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants permitted by the Division of Marine Fisheries.

*History Note:* Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1996; September 1, 1991;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. May 1, 2017; August 1, 2000;  
Readopted Eff. March 15, 2023.

### **15A NCAC 03K .0203 TRAWLING ACROSS OYSTER MANAGEMENT AREAS PROHIBITED**

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.4;  
Eff. January 1, 1991;  
Repealed Eff. March 1, 1994.

### **15A NCAC 03K .0204 MECHANICAL METHODS FOR OYSTERING PROHIBITED**

It shall be unlawful to use any mechanical methods for oystering as defined in 15A NCAC 03I .0101 to take oysters:

- (1) in the Mechanical Methods Prohibited areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises by a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises; and
- (2) on any posted bottom upon which oysters or shells have been planted by the State, unless such bottom has been opened to the public and mechanical methods for oystering are allowed.

*History Note:* Authority G.S. 113-134; 113-182; 113-204; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. August 1, 2004; May 1, 1997;  
Readopted Eff. March 15, 2023.

### **15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**

- (a) It shall be unlawful to take, possess, buy, or sell oysters from a shellfish lease or franchise during the open season unless such oysters have been culled in accordance with Rule .0202 of this Section.
- (b) All commercial oyster harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.
- (c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from a lease or franchise.
- (d) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. April 1, 2003;  
Readopted Eff. March 15, 2023.

### **15A NCAC 03K .0206 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES**

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. October 1, 1992;  
Temporary Amendment Eff. September 1, 2000;  
Amended Eff. August 1, 2002;  
Repealed Eff. May 1, 2015.

### **15A NCAC 03K .0207 OYSTER SIZE AND HARVEST LIMIT EXEMPTIONS**

Possession and sale of oysters by a hatchery or aquaculture operation and purchase and possession of oysters from a hatchery or aquaculture operation shall be exempt from bag and size limit restrictions as set forth in Rules .0201 and .0202 of this Section. It shall be unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture Operation Permit as set forth in 15A NCAC 03O .0503.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Temporary Adoption Eff. October 1, 2001;

*Eff. April 1, 2003;*  
*Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS**

- (a) For the purpose of this Rule and 15A NCAC 03R .0116, "Seed Oyster Management Area" shall mean a shellfish producing habitat area located in open harvest waters that has environmental conditions unsuitable for shellfish growth and survival that is designated to establish a localized regulatory strategy to allow the transfer of oysters to shellfish leases or franchises that have more suitable environmental conditions for further grow-out.
- (b) The Fisheries Director may, by proclamation, modify or close Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for the protection of public health related to the public health programs under the authority of the Marine Fisheries Commission.
- (c) It shall be unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.
- (d) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

*History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221.1; 143B-289.52;*  
*Eff. October 1, 2008;*  
*Readopted Eff. March 15, 2023.*

**15A NCAC 03K .0209 OYSTER SANCTUARIES**

- (a) For the purpose of this Rule and 15A NCAC 03R .0117, "Oyster Sanctuary" shall mean a type of artificial reef and shellfish producing habitat constructed for the purpose of oyster restoration that is managed to sustain populations of oyster broodstock. An Oyster Sanctuary is constructed to maximize habitat complexity and designed to meet its intended function for a minimum of 30 years.
- (b) The Fisheries Director may, by proclamation, close Oyster Sanctuary areas designated in 15A NCAC 03R .0117 to the use of specific fishing gears based on biological impacts or user conflicts.
- (c) The Fisheries Director may, by proclamation, designate and modify Oyster Sanctuaries based on biological impacts or variable spatial distribution, including shifted material.
- (d) It shall be unlawful to use mechanical methods in, or take shellfish from, Oyster Sanctuaries designated in 15A NCAC 03R .0117 or in accordance with Paragraph (c) of this Rule.
- (e) It shall be unlawful to use a trawl net, long haul seine, or swipe net in any designated Oyster Sanctuary.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;*  
*Eff. October 1, 2008;*  
*Readopted Eff. March 15, 2023.*

**SECTION .0300 - HARD CLAMS (MERCENARIA)**

**15A NCAC 03K .0301 SIZE AND HARVEST LIMITS OF CLAMS**

- (a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 hard clams per commercial fishing operation from public bottom in internal waters. It shall be unlawful to take, possess, sell, or purchase any clams (except *Rangia* or freshwater clams) less than one inch thick except in accordance with Rule .0305 of this Section. Clams shall be culled where harvested and all clams of less than legal size with their shell, shall be immediately returned to the bottom from which they were taken. In determining whether the size and harvest limits have been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the clams as authorized by law the entire quantity being graded or any portion thereof.
- (b) Size and harvest limits established in Paragraph (a) of this Rule and the season and area limitations established in Rule .0302 of this Section may or may not apply for:
  - (1) harvest limits for temporary openings consistent with the requirements of 15A NCAC 18A .0900 and the North Carolina Hard Clam Fishery Management Plan;



- (2) maintenance dredging operations, when clams would otherwise be destroyed, upon approval by the Division of Marine Fisheries and consistent with the North Carolina Hard Clam Fishery Management Plan; or
- (3) relaying of clams from polluted waters to private shellfish bottom as permitted by Rule .0104 of this Subchapter.

*History Note:* Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994;  
Readopted Eff. March 15, 2023.

#### **15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM**

- (a) It shall be unlawful to take, buy, sell, or possess any clams taken by mechanical methods for clamming as defined in 15A NCAC 03I .0101 from public bottom unless the season is open.
- (b) The Fisheries Director may, by proclamation, open and close the season for the taking of clams by mechanical methods from public bottom at any time in the Atlantic Ocean and only from December 1 through March 31 in Internal Waters.
- (c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that were opened at any time from January 1979 through September 1988 in:
  - (1) Newport, North, White Oak, and New rivers;
  - (2) Core and Bogue sounds;
  - (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
  - (4) the Atlantic Ocean.

Other areas opened for purposes as set out in Rule .0301(b) of this Section shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

- (d) The Fisheries Director may, by proclamation, impose any of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:
  - (1) specify time;
  - (2) specify means and methods;
  - (3) specify size; and
  - (4) specify quantity.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. May 1, 2017; April 1, 2003;  
Readopted Eff. June 1, 2022.

#### **15A NCAC 03K .0303 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES REQUIREMENT**

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 1991;  
Temporary Amendment Eff. September 1, 2000;  
Amended Eff. August 1, 2002;  
Repealed Eff. May 1, 2015.

#### **15A NCAC 03K .0304 PROHIBITED TAKING OF CLAMS**

- (a) It shall be unlawful to take clams by mechanical methods for clamming as defined in 15A NCAC 03I .0101, except as provided in Rule .0302 of this Section. Regardless of the areas that may be opened, it shall be unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately.
- (b) It shall be unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick or deflector plates otherwise used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period

specified for a mechanical clam harvest season in Internal Waters in accordance with Rule .0302(a) of this Section. A period of 14 days before and after the season as specified by proclamation shall be allowed for the installation and removal of kick or deflector plates and clam trawls or cages. Vessels with permits for activities provided for in Rules .0104, .0107, and .0401 of this Subchapter shall be exempt from this Rule during the times those activities are permitted.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. October 1, 2008; February 1, 2008; May 1, 1997; July 1, 1993;  
Readopted Eff. March 15, 2023.

#### **15A NCAC 03K .0305 CLAM SIZE AND HARVEST LIMIT EXEMPTIONS**

Possession and sale of clams by a hatchery or aquaculture operation and purchase and possession of clams from a hatchery or aquaculture operation shall be exempt from bag and size limit restrictions as set forth in Rule .0301 of this Section. It shall be unlawful to possess, sell, purchase, or transport such clams unless they are in compliance with all conditions of the Aquaculture Operation Permit as set forth in 15A NCAC 03O .0503.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. September 1, 1991;  
Readopted Eff. March 15, 2023.

### **SECTION .0400 - RANGIA CLAMS**

#### **15A NCAC 03K .0401 POLLUTED AREA PERMIT REQUIREMENTS**

It shall be unlawful to take Rangia clams or their shells by any method from polluted waters without first obtaining a Permit to Harvest Rangia Clams from Polluted Areas from the Fisheries Director. The permit application shall include a list of all designees operating under the permit. The permit shall designate the area, means and methods, and times in which Rangia clams may be taken. The permit applicant shall designate the licensed fish dealer where the Rangia clams are to be landed and the method for disposing of Rangia clam meats. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. August 1, 2004;  
Readopted Eff. March 15, 2023.

#### **15A NCAC 03K .0402 SIZE AND HARVEST LIMITS**

Size and harvest limits applicable to hard clams in Rule .0301 of this Subchapter shall not apply to Rangia clams.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. August 1, 2004;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0403 DISPOSITION OF MEATS**

It shall be unlawful to dispose of meats from Rangia clams taken from prohibited (polluted) waters by a method that will result in human consumption or create risk of human consumption.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-298.52;  
Eff. January 1, 1991;  
Amended Eff. August 1, 2004;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0404 DREDGES AND MECHANICAL METHODS PROHIBITED AND OPEN SEASON**

It shall be unlawful to use mechanical methods for oystering or clamming to take Rangia clams or their shells:

- (1) within 100 feet of any pier;
- (2) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately;
- (3) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases and Franchises; and
- (4) in areas designated in Rule .0204 of this Subchapter and 15A NCAC 03R .0103.

Mechanical methods prohibited by this Rule shall be permitted in areas and at times specified by proclamation as authorized by Rules .0201 and .0302 of this Subchapter.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Eff. August 1, 2004;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED**

It shall be unlawful to possess oysters, hard clams, or mussels while taking Rangia clams or their shells from a prohibited (polluted) area.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Eff. August 1, 2004;  
Readopted Eff. April 1, 2019.

### **SECTION .0500 - SCALLOPS**

#### **15A NCAC 03K .0501 BAY SCALLOP HARVEST MANAGEMENT**

The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of bay scallops from public bottom:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify open seasons for the taking of bay scallops during the period beginning the last Monday in January and ending the last Friday in May;
- (5) specify size; and
- (6) specify quantity, but shall not exceed possession of more than 15 standard U.S. bushels per person per day or a total of 30 standard U.S. bushels in any combined commercial fishing operation per day.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. May 1, 2015; February 1, 2008;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0502 TAKING BAY SCALLOPS AT NIGHT AND ON WEEKENDS**

(a) It shall be unlawful to take bay scallops between sunset and sunrise or on Saturdays or Sundays, except as provided in Rule .0105 of this Subchapter.

(b) Bay scallops taken on Saturdays or Sundays from shellfish leases or franchises in accordance with G.S. 113-208 shall be exempt from this Rule.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. May 1, 2015; August 1, 2000;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0503 BAY SCALLOP DREDGE PROHIBITED**

It shall be unlawful to take bay scallops with any of the following:

- (1) dredges weighing more than 50 pounds or equipped with teeth; and
- (2) any other instrument or device designed to drag the bottom to aid in the taking of bay scallops.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0504 CALICO SCALLOP HARVEST MANAGEMENT**

(a) It shall be unlawful to land or possess aboard a vessel calico scallops except at such times as designated by the Fisheries Director by proclamation.

(b) The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of calico scallops:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. April 1, 2019.

#### **15A NCAC 03K .0505 SEA SCALLOPS SIZE LIMIT AND TOLERANCE**

It shall be unlawful to land or possess more than 10 percent by number sea scallops with a shell height of less than three and one-half inches. In determining whether the 10 percent tolerance limit has been exceeded, Marine Fisheries Inspectors shall be authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the sea scallops as authorized by law the entire quantity being graded or any portion thereof.

*History Note:* Authority G.S. 113-134; 113-136; 113-137; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Readopted Eff. March 15, 2023.

#### **15A NCAC 03K .0506 SOAKED OR SWELLED BAY SCALLOPS PROHIBITED**

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. July 1, 1993;  
Repealed Eff. February 1, 2008.

#### **15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM A SHELLFISH LEASE OR FRANCHISE**

(a) All commercial scallop harvesting operations shall operate in accordance with any proclamations issued under the authority of Rule .0110 of this Subchapter.

(b) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from a lease or franchise.

(c) It shall be unlawful for a shellfish lease or franchise holder or the holder's designees to fail to obtain an Aquaculture Operation Permit if the lease or franchise has material extending more than 18 inches above the leased bottom or uses equipment including cages, bags, or predator nets to cultivate shellfish.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Eff. May 1, 2015;  
Readopted Eff. April 1, 2019;  
Amended Eff. March 15, 2023.

**15A NCAC 03K .0508 SCALLOP AQUACULTURE HARVEST EXEMPTIONS**

The following exemptions and restrictions shall apply to the possession, sale, purchase, or transport of scallops produced in an aquaculture operation:

- (1) Possession and sale of scallops by a scallop aquaculture operation shall be exempt from restrictions set forth in Rules .0501, .0504, and .0505 of this Section.
- (2) Purchase and possession of scallops from a scallop aquaculture operation shall be exempt from restrictions set forth in Rules .0501, .0504, and .0505 of this Section.
- (3) It shall be unlawful for a person to possess, sell, purchase, or transport scallops described in Sub-Items (1) and (2) of this Rule unless in compliance with all conditions of the Aquaculture Operation Permit issued pursuant to 15A NCAC 03O .0500.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;  
Eff. May 1, 2015;  
Readopted Eff. April 1, 2019.