

**LICENSE AND STATISTICS REVISED DEFINITIONS
ISSUE PAPER**

June 12, 2008 (REVISED)

(NOTE: proposed rule under construction, eff. Sept. 1, 2008)

I. ISSUE

There are two definitions in the rulebook that need to be updated. First, the definition of Trip Ticket in the rulebook does not include trip ticket reports submitted as an electronic file from the software the Division issues to dealers. And second, the definition for Offices of the Division should be updated to include permits and exclude locations where the Wildlife Resources Commission agents issue Coastal Recreational Fishing Licenses (CRFLs). An update also needs to be made to reflect the change in location of the division office from Wanchese to Roanoke Island.

II. ORIGINATION

DMF staff.

III. BACKGROUND

Definition of Trip Ticket

In 2004, License and Statistics staff received a grant from the Atlantic Coastal Cooperative Statistic Program to develop an enhanced Microsoft based software for fish dealers to use for entry and submittal of trip tickets. Development of this software coincided with the National Marine Fisheries Service mandating electronic reporting by federally permitted dealers. This federal mandate immediately created a large user base for the software. The software was modified to function both for state-only licensed dealers and for federal-state licensed dealers. Currently, approximately 55 dealers use the software and submit electronic files to DMF each month. These files contain the same data fields as paper trip tickets. There are certain advantages to DMF for dealers to use the software: more timely submittals, no manual data entry required by DMF staff, and gear/water associations are on the specific species record, not at the trip level.

The definition of a North Carolina Trip Ticket in 15A NCAC 03I .0101(22) is as follows: *Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.* There is no mention of electronic files being acceptable.

Definition of Office of the Division

When this definition was first devised the Division did not issue any permits. The Division currently issues approximately 22 different permits. Coastal Recreational Fishing Licenses, enacted in 2007, are also sold at Wildlife Resource Commission sales agent sites that are not considered an office of the Division.

The definition of Office of the Division in 15A NCAC 03I .0101(43) is as follows: *Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.*

IV. AUTHORITY

North Carolina Fisheries Rules for Coastal Waters (15A NCAC)

03I .0101(22) North Carolina Trip Ticket

03I .0101(43) Office of the Division

V. DISCUSSION

The definition of trip ticket in rule is outdated and should be modified to include electronic files as a suitable alternative to the multiple-part form. The definition of Office of the Division is also outdated and should be modified to include locations where permits are issued and exclude WRC sales agent locations where CRFLs are issued.

VI. PROPOSED RULE(S)

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 - GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 - (A) Seines less than 30 feet in length;
 - (B) 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;
 - (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;
 - (D) A dip net 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;
 - (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 - (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (G) Cast Nets;
 - (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
 - (I) Up to two minnow traps.
- (2) 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.
- (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
- (4) Possess. Any actual or constructive holding whether under claim of ownership or not.
- (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (6) Use. Employ, set, operate, or permit to be operated or employed.
- (7) 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.
- (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) 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 size, webbing diameter, or method in which it is used.
- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp which 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 boat.
- (12) 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.

- (13) Mechanical methods for clamming. Includes 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.
- (14) Mechanical methods for oystering. Includes dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish.
 - (A) Total length is 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.
 - (B) Fork length is 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.
 - (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized 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:
 - (A) predator protection,
 - (B) food,
 - (C) water circulation,
 - (D) salinity, or
 - (E) temperature controls utilizing technology not found in the natural environment.
- (20) Fish habitat areas. The fragile 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 water, as determined through marine and estuarine survey sampling, include:
 - (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, 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 rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.
 - (B) Shellfish producing habitats are those areas in which shellfish, such as clams, oysters, scallops, mussels, and whelks, whether historically or currently, 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.
 - (C) Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (D) Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (E) Nursery areas are those areas in which 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 which have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.

- (F) Strategic Habitat Areas are specific locations of individual fish habitats or systems of habitats that have been identified to provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. ~~Multiple part form provided by the Department to fish dealers who are required to record and report transactions on such forms.~~ Division approved paper forms or electronic data files submitted by Fish Dealers for the reporting of fish harvest, harvest method, area of catch and any other information required by the Division.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
 - (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
 - (I) Fire corals (Class Hydrozoa);
 - (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
 - (iii) Bryozoans (Phylum Bryozoa);
 - (iv) Tube Worms (Phylum Annelida):
 - (I) Fan worms (Sabellidae);
 - (II) Feather duster and Christmas tree worms (Serpulidae);
 - (III) Sand castle worms (Sabellaridae).
 - (v) Mussel banks (Phylum Mollusca:Gastropoda);
 - (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).
- (B) Plants:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
 - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
- (A) Fire corals and hydrocorals (Class Hydrozoa);
 - (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
 - (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
 - (i) Sea fans (Gorgonia sp.);
 - (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
 - (iii) Sea pansies (Renilla sp.).
- (26) Shellfish production on leases and franchises:
- (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

- (28) 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.
- (29) 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 lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
- (30) Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) 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.
- (34) 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 laws and regulations.
- (35) 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 or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license and permit transactions in ~~the cities of~~ Wilmington, Washington, Morehead City, Columbia, ~~Wanchese~~ 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.
- (44) Land:
- (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
- (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) 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, is still the responsible party for the license.

- (48) 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.
- (49) 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.
- (50) 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:
 - (A) predator protection,
 - (B) food,
 - (C) water circulation,
 - (D) salinity, or
 - (E) temperature controls utilizing proven 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.
- (51) 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).
- (52) 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).
- (53) 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.

*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. December 1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001.*

VII. RECOMMENDATION

DMF recommends forwarding this issue to MFC for Notice of Text for rule making.

Prepared by: Don Hesselman
 April 15, 2008
 Revised: June 12, 2008 (C. Blum)

NOTICE OF TEXT ATTACHMENT

#6 – Explain Reason for Proposed Action:

15A NCAC 03I .0101 DEFINITIONS

Modify definition of North Carolina Trip Ticket to include a reference to electronic data files submitted from approved software.

Modify definition of Office of the Division to include reference to permits and exclude other offices where Coastal Recreational Fishing Licenses are sold.