

**AMEND RULES 03H .0102 AND 03H .0103  
UPDATE GENERAL INFORMATION SECTION  
ISSUE PAPER  
June 10, 2008**

**I. ISSUE**

Amend Scope and Purpose and Proclamation Authority rules to enhance the public's understanding of proclamation authority and MFC jurisdiction.

**II. ORIGINATION**

DMF Rules Advisory Team (RAT) as an IJ FMP implementation action.

**III. BACKGROUND**

The IJA FMP was initially adopted by the MFC in August 2002. It is undergoing the five year review as required by the Fisheries Reform Act (FRA) of 1997. The IJA FMP adopts by reference existing fisheries management plans for 23 finfish species or species group developed by the Atlantic States Marine Fisheries Commission (ASMFC) or federal regional management Councils (South Atlantic and Mid-Atlantic.). A variety of MFC rules and Division proclamations are utilized to put in place management actions in order for the state to be in compliance with the ASMFC and Council plans. A single rule, 03M .0512 (compliance with fishery management plans), currently allows for the suspension of only existing size or harvest limits by proclamation and the implementation of different size or harvest limits by proclamation. Actions taken under this rule are in effect till and subject to review at the next MFC meeting. In the IJ FMP Amendment 1 the Division is proposing to broaden the types of actions that may be implemented under 03M .0512 by proclamation. In addition certain management actions for IJ FMP species will be transferred from species rule to proclamation in order to readily accommodate federal compliance. The MFC and some advisory committee members expressed concern for how the public would be made aware of the restrictions that would henceforth be put in place by proclamation.

**IV. AUTHORITY**

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

**V. DISCUSSION**

A Division working group within RAT was formed to address the public's concern and has developed an approach that includes proclamation warnings within the rulebook index. In their deliberations it was also determined to fully utilize the rulebook preface to introduce the rulebook to the public and they noted updates were also needed to Subchapter 03H General Information.

The changes in 03H .0102 (a) utilize language from G.S. 113-181 for the Department and G.S. 143B-289.51 for the MFC and more realistically describe the role of DMF. Rule 03H .0102 (b) now describes in more detail where the rules apply and .0102 (c) alerts the public to opportunities to comment on or effect proposed rules and rule changes. Wording from G.S. 113-221.1 was added to .0103 (a) along with directions on where proclamation authority exists, and 03H .0103 (c) instructs the public on how to access proclamations.

## VI. PROPOSED CHANGES TO SUBCHAPTER 3H

### SUBCHAPTER 3H – GENERAL INFORMATION

#### SECTION .0100 – GENERAL INFORMATION

##### **.0102 SCOPE AND PURPOSE RULE DEVELOPMENT AND APPLICABILITY**

~~(a) The Division of Marine Fisheries is charged with the stewardship of the marine and estuarine resources of the State of North Carolina and is responsible for the management of all marine and estuarine resources. This responsibility includes the administration and enforcement of all statutes and rules governing commercial and recreational fishing in coastal waters, the development and improvement of the cultivation and harvesting of shellfish, and submerged land claims in North Carolina. Chapter 3 of Title 15A of the North Carolina Administrative Code contains the rules developed by the Department of Environment and Natural Resources (Department) and adopted by the North Carolina Marine Fisheries Commission (Commission). The Department develops proposed rules after conducting research and gathering statistics concerning the status of the marine and estuarine resources of the State. The Department also administers and enforces the adopted rules. The Commission is a regulatory body created within the Department to adopt rules and policies to manage, protect, preserve and enhance the marine and estuarine resources under its jurisdiction. The Fisheries Director and staff at the Division of Marine Fisheries conduct management, enforcement, research, monitoring, statistics, and licensing programs to provide information on which to base decisions on rule making and present that information to the Department and Commission in the form of fishery management and coastal habitat protection plans and proposed rules.~~

~~(b) In its constant effort to meet its obligations, the Division of Marine Fisheries administers programs in commercial and recreational fisheries management and enforcement, applied research and monitoring, fisheries statistics, shellfish rehabilitation, bottom leasing, submerged land claims, and information and education.~~

~~(c)~~ (b) The rules herein are applicable to the management of all marine and estuarine resources in all coastal fishing waters of North Carolina, including joint fishing waters, occurring between inland fishing waters and the US Exclusive Economic Zone (EEZ) that begins three miles from shore and in the Atlantic Ocean. The NC Wildlife Resource Commission is responsible for regulating fishing in inland fishing waters (see 15A NCAC 03Q .0200 for boundary descriptions). The federal government (NOAA and the federal fishery management councils or commissions) manages species that migrate across state boundaries or fisheries occurring in the EEZ from three miles out to 200 miles in the Atlantic Ocean. State inspectors have the power to enforce federal regulations if State rules are adopted to comply with management measures adopted by federal fishery management councils or commissions.

~~(d)~~ (c) The rules are designed to carry out, in part, the duty of the Division of Marine Fisheries to maintain, preserve, protect, and develop all the marine and estuarine resources of the State. The public has the opportunity to comment on proposed rules at public meetings of the Commission and its committees and at public hearings announced in the North Carolina Register. Persons proposing the Commission amend, repeal or adopt a fisheries rule can suggest rule changes through public comment opportunities provided at Commission meetings or by filing a petition with the Commission following the procedures set out in 15A NCAC 03P .0300 et. seq.

*History Note: Authority G.S. 113-134; 143B-289.52; 150B-11;  
Eff. January 1, 1991;  
Amended Eff. ???.*

##### **.0103 PROCLAMATION AUTHORITY OF FISHERIES DIRECTOR**

(a) The Marine Fisheries Commission has the authority to delegate to the Fisheries Director the ability to issue public notices, called proclamations, suspending or implementing particular rules of the Commission that may be affected by variable conditions. Proclamation authority is promulgated through the rule making process and proclamation measures are codified in rules for the specific fishery or activity. The proclamation authority granted to the Fisheries Director by the Marine Fisheries Commission within this Chapter includes the authority to close as well as open seasons and areas, to establish conditions governing various activities, and to reduce or increase the size and harvest limits from those stated in rule when specifically authorized. It is unlawful to violate the provisions of any proclamation issued by the authority of Marine Fisheries Commission Rule.

(b) Unless specific variable conditions are set forth in a rule granting proclamation authority to the Fisheries Director, variable conditions triggering the use of the Fisheries Director's proclamation authority may include any of the following: compliance with changes mandated by the Fisheries Reform Act and its amendments, biological impacts, environmental conditions, compliance with Fishery Management Plans, user conflicts, bycatch issues and variable spatial distributions.

(c) Proclamations are posted on the Division of Marine Fisheries web site, [www.ncdmf.net](http://www.ncdmf.net), and are available by email, fax and US Postal Service by notifying the NC Division of Marine Fisheries, Fisheries Management Section, PO Box 769, Morehead City, NC 28557 or by phone at 252-726-7021 or 800-682-2632. Rules implemented by proclamation can be effective immediately for public health issues and quota managed fisheries, and in as little as 48 hours after issuance for other issues so it is imperative that persons affected by proclamations keep themselves informed.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994; September 1, 1991;  
Temporary Amendment Eff. July 1, 1999;  
Amended Eff. ???; August 1, 2000.*

## **VII. RECOMMENDATION**

DMF recommends the MFC give Notice of Text at their June 2008 meeting.

Prepared by Mike Marshall and Katy West  
June 10, 2007

### **NOTICE OF TEXT ATTACHMENT**

#### **15A NCAC 03H .0102 RULE DEVELOPMENT AND APPLICABILITY**

Rule is proposed for amendment and describes in more detail the role of the Department and the Marine Fisheries Commission, where the rules apply, and alerts the public to opportunities to comment on or effect proposed rules and rule changes

#### **15A NCAC 03H .0103 PROCLAMATION AUTHORITY**

Rule is proposed for amendment and defines proclamations, how proclamation authority exists in rule, and instructs the public on how to access proclamations.