



Rulemaking Update



DEPARTMENT OF ENVIRONMENTAL QUALITY

Marine Fisheries

Marine Fisheries Commission Meeting | Catherine Blum | February 2021



Presentation Outline

- Periodic Review and Expiration of Existing Rules
- 2020-2021 Rulemaking Cycle
 - “Package A”: update
 - “Package B”: final approval
- 2021-2022 Rulemaking Cycle Preview



Periodic Review and Expiration of Existing Rules

(G.S. 150B-21.3A)

- Regulatory Reform Act of 2013
- Review of rules at least once every 10 years
- Two parts:
 - Report (complete)
 - Readoption (underway)



Periodic Review and Expiration of Existing Rules (G.S. 150B-21.3A)

Rules	2017	2018	2019	2020	2021	2022	2023	2024
Chapter 03 (172 rules)	Report	41 Rules Readopted	2 Rules Readopted	13 Rules Proposed	Rule Readoption (116)	6/30/22 Deadline		
Subchapter 18A (164 rules)			Report	42 Rules Proposed	Rule Readoption (122)			6/30/24 Deadline

Figure 1. Marine Fisheries Commission rule readoption schedule to comply with G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.



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2020-2021 Rulemaking Cycle

- “Package A” (7 rules): Recreational Water Quality Program
- “Package B” (41 rules) – final approval
 - Shellfish growing waters
 - Shellfish sanitation and processing
 - Shellfish lease user conflicts
 - Special Secondary Nursery Areas
 - Oyster sanctuaries



2020-2021 Rulemaking Cycle “Package A”

Time of Year	Action
February-April 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 2020	MFC approves Notice of Text for Rulemaking
August 2020	Publication of proposed rules in the <i>North Carolina Register</i>
August-October 2020	Public comment period held
Aug. 26, 2020	Public hearing held via WebEx
November 2020	MFC considers approval of permanent rules
January 2021	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 1, 2021	Proposed effective date of rules
April 1, 2021	Rulebook supplement available online
April 15, 2021	Commercial license sales begin



2020-2021 Rulemaking Cycle “Package A”

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February-April 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
May 2020	MFC approves Notice of Text for Rulemaking
August 2020	Publication of proposed rules in the <i>North Carolina Register</i>
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2020-2021 Rulemaking Cycle “Package B”

Time of Year	Action
February-July 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2020	MFC approves Notice of Text for Rulemaking
October 2020	Publication of proposed rules in the <i>North Carolina Register</i>
October-November 2020	Public comment period held
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April 2021	Rules reviewed by Office of Administrative Hearings/ Rules Review Commission
April 15, 2021	Commercial license sales begin
May 1, 2021 or TBD	Proposed effective date of rules; some rules are subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.
May 1, 2021	Rulebook supplement available online



2020-2021 Rulemaking Cycle “Package B”

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February-July 2020	Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management
August 2020	MFC approves Notice of Text for Rulemaking
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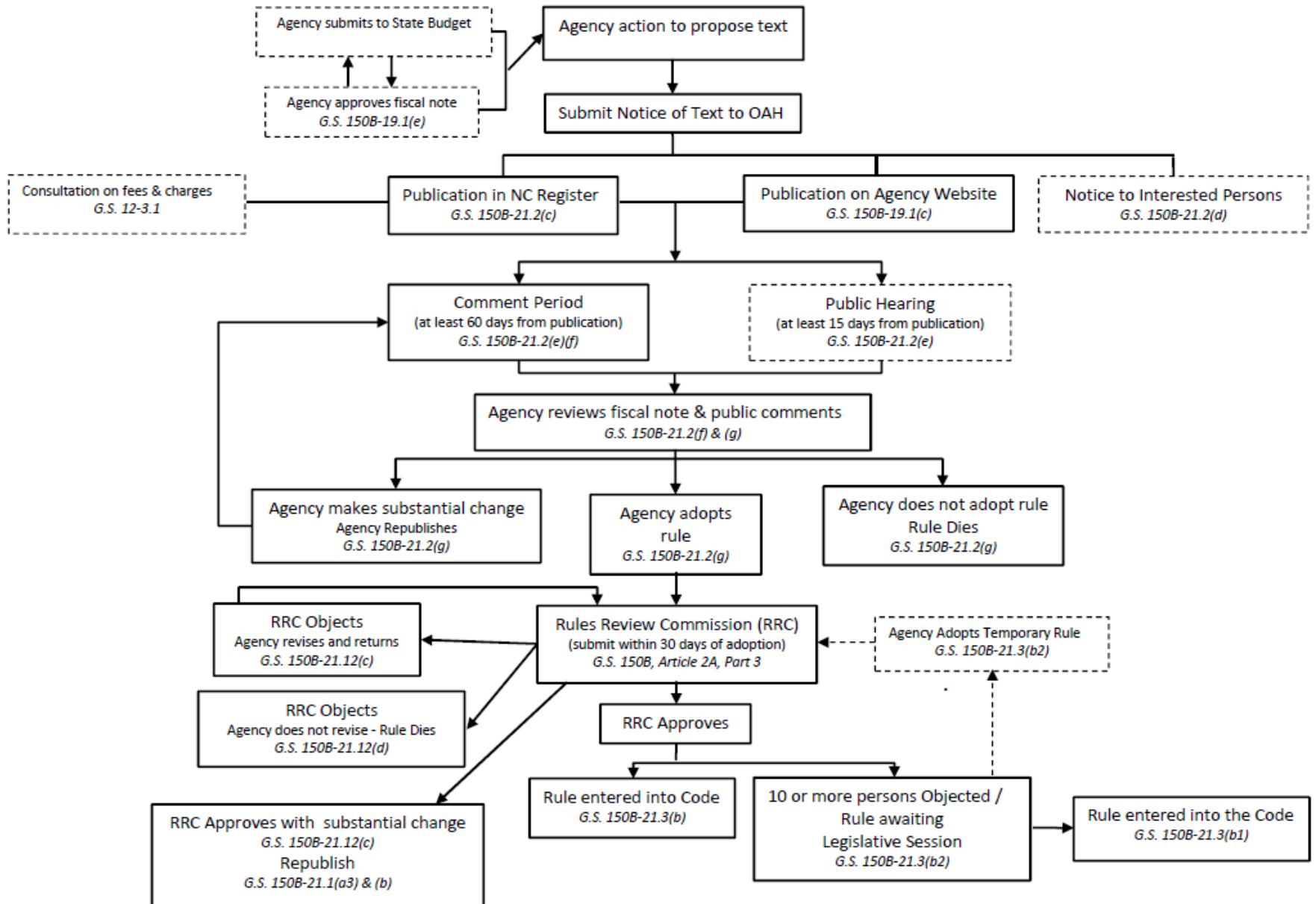


2020-2021 Rulemaking Cycle “Package B”

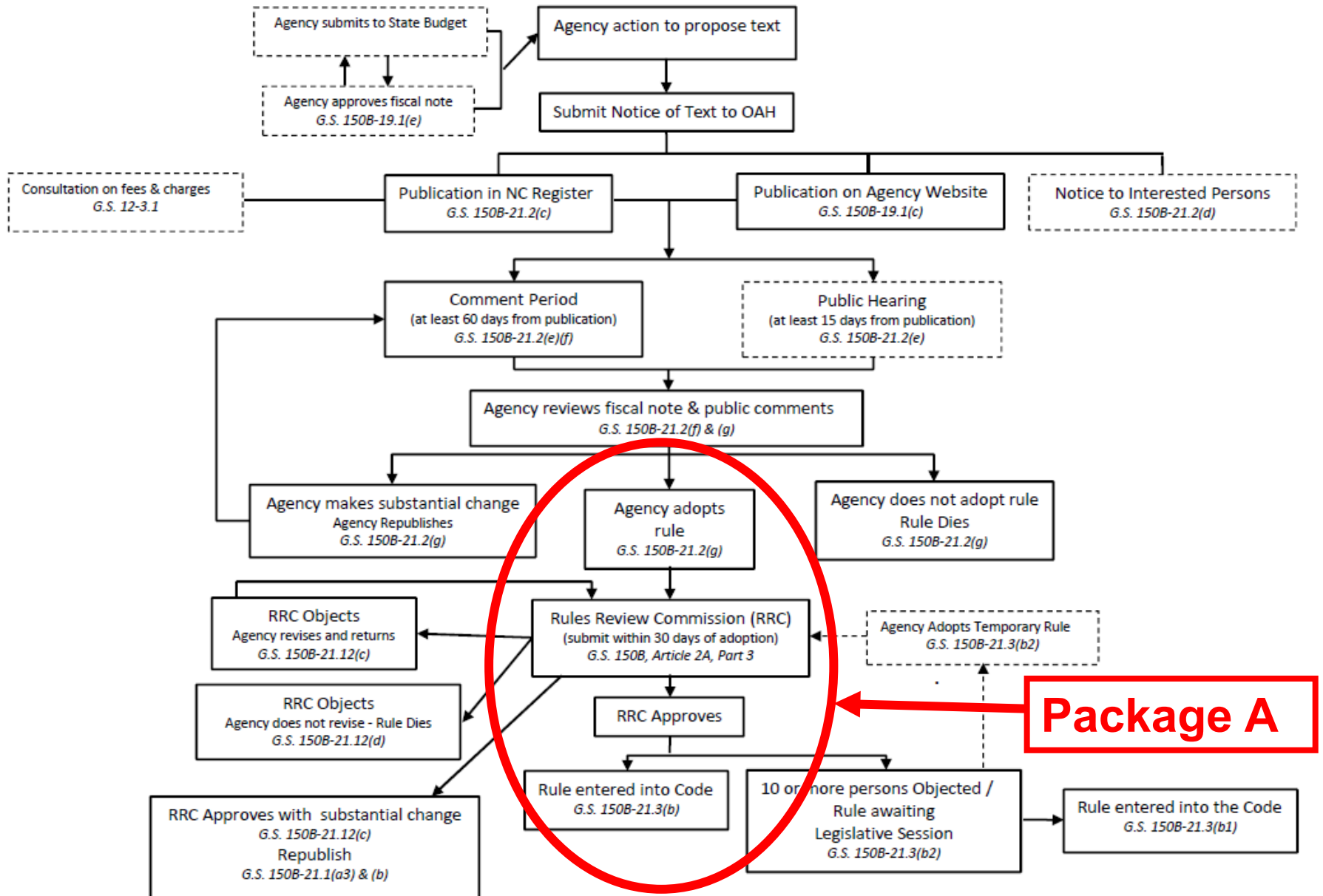
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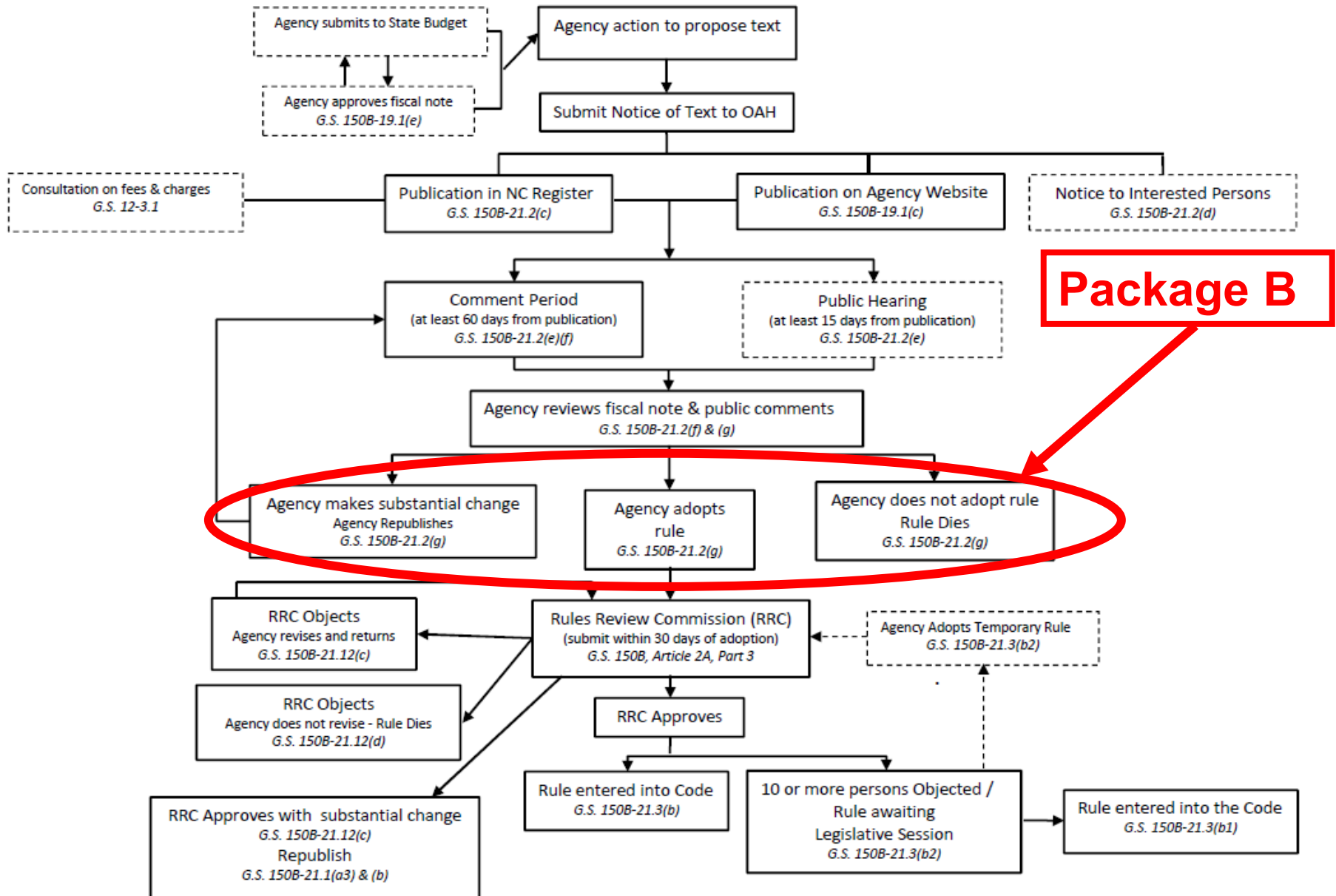
Permanent Rulemaking Process



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Permanent Rulemaking Process



Rulemaking Subjects for Package B

Shellfish Growing Waters (14 rules)

- Rule readoption per G.S. 150B-21.3A
- Conform rules with National Shellfish Sanitation Program standards
- Formalize conditionally approved shellfish areas in permanent rule
- No substantive changes to ongoing operations



Rulemaking Subjects for Package B

Shellfish Sanitation and Processing (21 rules)

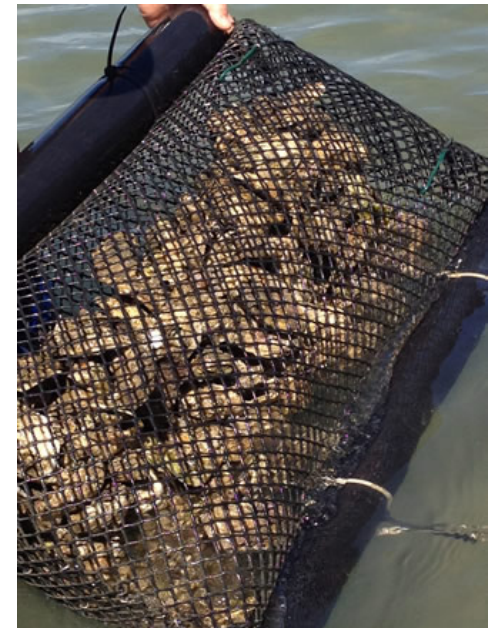
- Rule readoption per G.S. 150B-21.3A
- Conforming changes to 13 rules
- No changes to 8 rules



Rulemaking Subjects for Package B

Shellfish Lease User Conflicts (3 rules)

- Rule readoption per:
 - G.S. 150B-21.3A
 - S.L. 2019-37 (Support Shellfish Aquaculture Industry)
- Proposed rules:
 - Reduce user conflicts
 - Support productive shellfish aquaculture industry
- Proposed changes:
 - Add cumulative impacts
 - Increase setbacks
 - Add 250-foot buffer between leases
 - Increase 100-foot buffer to 250 feet for developed shorelines
 - Limit number of corners
 - Modify marking requirements for visibility and navigation concerns
 - Enhance training program



Rulemaking Subjects for Package B

Shrimp Fishery Management Plan Amendment 1 Special Secondary Nursery Areas (2 rules)

- Rule readoption per G.S. 150B-21.3A (1 rule)
- Rule amendment (1 rule)
- All nine sites functioning as Secondary Nursery Areas
- Proposed change extends small mesh gill net attendance



Rulemaking Subjects for Package B

Oyster Sanctuaries (1 rule amendment)

- Protected from oyster harvest; some fishing prohibited
- 10 sites currently in rule
 - Add five sites
 - Update boundaries of three sites
 - Remove two sites
- Originally implemented via Oyster Fishery Management Plan Amendment 2 in 2008
- Approximately 400 acres total



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2020-2021 Rulemaking Cycle “Package B”

The division recommends the Marine Fisheries Commission approve readoption and amendment of 41 rules in 15A NCAC 03 and 18A as published in the *N.C. Register*, per G.S. 150B-21.3A, except for additional technical changes recommended to three rules in 15A NCAC 03O .0200:

- 15A NCAC 18A .0431, .0704, .0901-.0910, .0913, .0914;
- 15A NCAC 18A .0140-.0143, .0146, .0150, .0154, .0155, .0159, .0160, .0163, .0167, .0169-.0172, .0179, .0180, .0188-.0190;
- 15A NCAC 03O .0201, .0202, .0204;
- 15A NCAC 03R .0104, .0105; and
- 15A NCAC 03R .0117.



2021-2022 Rulemaking Cycle Preview

- Chapter 03 (Marine Fisheries)
 - 116 rules remaining
- Subchapter 18A (Sanitation)
 - Approximately 40 rules
- Two rule packages:
 - “Package A”: May 2021 start
 - “Package B”: August 2021 start



2021-2022 Rulemaking Cycle Preview

- Several rules remaining to be readopted contain defined terms.
- Some defined terms are only applicable to an individual rule.
- Rule 15A NCAC 03I .0101 (Definitions) applies to all MFC rules in Chapter 03 (Marine Fisheries).
- Some proposed new definitions and existing definitions may best be added to the “Definitions” rule to begin the formal rulemaking process later this year.
- This rule will be part of “Package B” for the August 2021 MFC meeting.



Rulemaking Update

Questions?

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