



Rulemaking Update



DEPARTMENT OF ENVIRONMENTAL QUALITY

Marine Fisheries

Marine Fisheries Commission Meeting | Catherine Blum | August 2020



Presentation Outline

- 2020-2021 Rulemaking Cycle
 - “Package A”
 - “Package B”
- Periodic Review and Expiration of Existing Rules
- Rulemaking Issues for Package B
- Division Recommendation
- Notice of Text for Rulemaking



2020-2021 Rulemaking Cycle

- May 2020 (Package A – 7 rules): Recreational Water Quality Program
- August 2020 (Package B – 50 rules):
 - Shellfish growing waters
 - Shellfish sanitation and processing
 - Shellfish lease user conflicts
 - General regulations: joint
 - 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

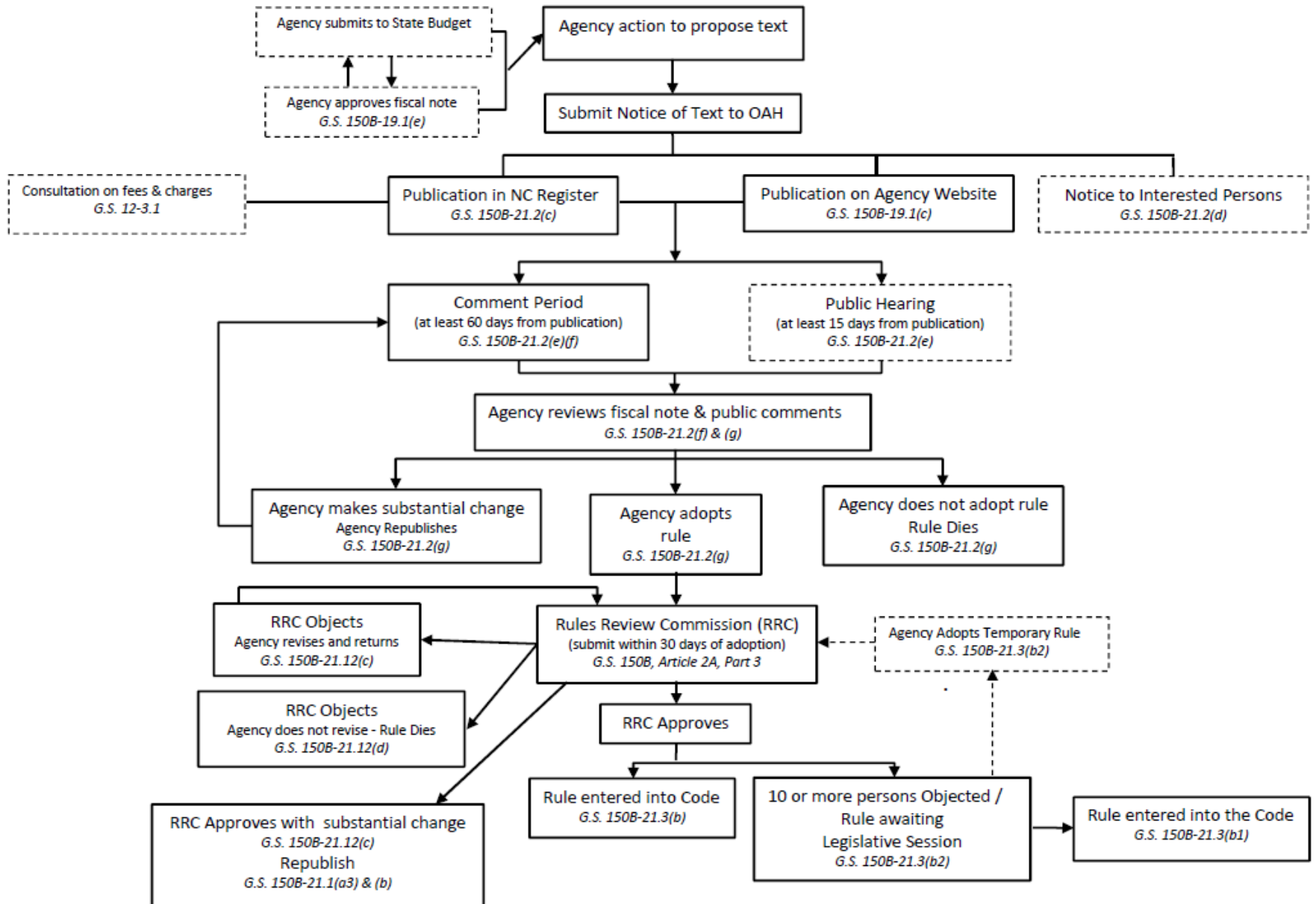


2020-2021 Rulemaking Cycle (Package B)

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>
Oct.-Dec. 2020	Public comment period held
October 2020	Public hearing held (details to be determined)
February 2021	MFC considers approval of permanent rules
April 2021	Rules reviewed by Office of Administrative Hearings/Rules Review Commission
April 15, 2021	Commercial license sales begin
May 1, 2021 <i>or</i> 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



Permanent Rulemaking Process



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.



Rulemaking Issues 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 Issues for Package B

Shellfish Sanitation and Processing (21 rules)

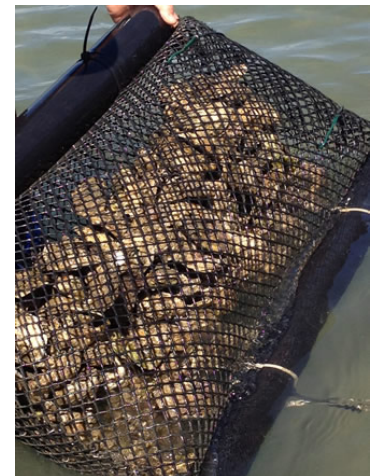
- Rule readoption per G.S. 150B-21.3A
- Conforming changes to 13 rules
- No changes to 8 rules



Rulemaking Issues for Package B

Shellfish Lease User Conflicts (3 rules)

- Rule readoption per:
 - G.S. 150B-21.3A
 - Session Law 2019-37 (Support to Shellfish Aquaculture Industry)
- Proposed rules:
 - Reduce user conflicts
 - Support productive shellfish aquaculture industry
- Proposed changes:
 - Increase setbacks
 - Limit number of corners
 - Marking requirements
 - Enhanced training program



Rulemaking Issues for Package B

General Regulations: Joint (9 rules)

- Rule readoption per G.S. 150B-21.3A
- No changes proposed
- Rules originally adopted by Marine Fisheries Commission and Wildlife Resources Commission



Rulemaking Issues 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 Issues for Package B

Oyster Sanctuaries (1 rule amendment)

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



Division Recommendation

The division recommends the Marine Fisheries Commission begin the rule readoption and amendment process for the 50 rules presented, by voting on Notice of Text for Rulemaking, including the corresponding fiscal analyses.



Next Steps

Vote to begin the rule readoption and amendment process by voting on Notice of Text for Rulemaking, including the corresponding fiscal analyses, for:

- 49 rule readoptions:
 - Shellfish growing waters
 - Shellfish sanitation and processing
 - Shellfish lease user conflicts
 - General regulations: joint
 - Special Secondary Nursery Areas
- 1 rule amendment (Oyster sanctuaries)



Notice of Text for Rulemaking

Vote on the proposed rules and associated fiscal analysis for Notice of Text for Rulemaking, per G.S. 150B-21.3A, for:

- **15A NCAC 18A .0431, .0704, .0901-.0910, .0913, and .0914** (shellfish growing waters).
- **15A NCAC 18A .0140-.0143, .0146, .0150, .0154, .0155, .0159, .0160, .0163, .0167, .0169-.0172, .0179, .0180, and .0188-.0190** (shellfish sanitation and processing).
- **15A NCAC 03O .0201, .0202, and .0204** (shellfish lease user conflicts).
- **15A NCAC 03Q .0101-.0109** (general regulations: joint).
- **15A NCAC 03R .0104 and .0105** (Special Secondary Nursery Areas).



Notice of Text for Rulemaking

Vote on the proposed rule and associated fiscal analysis for Notice of Text for Rulemaking to amend 15A NCAC 03R .0117 (oyster sanctuaries).

