

## DMF Rules Advisory Team (RAT) Mini-Orientations Summary

Nov. 4, 2021 – Dec. 7, 2021

Total number of sessions: 8

Total number of attendees: 72

Presenter: Catherine Blum, DMF rulemaking coordinator

Presentation: DMF Share > Rules Advisory Team > Orientation-Training > 2021 Orientation

### Questions and Comments Received

1. The "Periodic Review and Expiration of Existing Rules" ([G.S. 150B-21.3A](#)) requires agencies with rules to conduct a review of its rules at least once every 10 years. Since the Marine Fisheries Commission rules are being readopted over several years, how will that 10-year clock work next time?

**Assuming the Periodic Review law remains in force, the 10-year review of rules moving forward will occur on a staggered basis.** The first action that occurred was for the 36 rules that were determined to be necessary without substantive public interest effective Jan. 9, 2018. Effective dates of rule readoptions so far include:

- April 1, 2019;
- March 17, 2021;
- April 1, 2021; and
- May 1, 2021.

Rules are expected to become effective April 1, 2022 and May 1, 2022, with other rules to follow through at least April 1, 2024. So, the next round of reviews will need to occur within 10 years from each of these dates. There may be an administrative advantage to review some rules earlier than 10 years as a strategy to clump rules back together. The next review is expected to be easier because rule readoptions should require minimal changes to the rules in the next iteration.

2. The DMF Economist often primarily focuses on "state" economic impacts of proposed rule changes and is not as focused on economic impacts to private parties, like fishermen. Does the rulemaking process account for economic impacts beyond impacts to the state?

**Yes.** Requirements for economic analysis of proposed rules are set out in [G.S. 150B-21.4](#). This law requires an analysis be completed for expected impacts to state funds, local funds (local units of government), and substantial economic impact (an aggregate impact on all persons affected of at least one million dollars in a 12-month period). The analysis must be submitted to the Office of State Budget and Management (OSBM) for approval.

OSBM's [website](#) states the "analyses identify, describe, and quantify the expected effects of the proposed rule changes to the extent possible. The purpose of conducting a regulatory impact analysis is to improve rule design, inform

decision-makers, and communicate with the regulated community." So, while the focus is certainly on impacts to the state's funds, the analysis must address other impacts too. The required level of detail for impacts to state funds is often greater though.

**Bonus information:** Section 2 of Executive Order 70 [10/21/2010 as amended by Executive Order 48 (4/9/2014)] remains in force and requires cabinet agencies (which includes DEQ) to "quantify the costs and benefits to all parties of a rule to the greatest extent possible. The level of analysis shall be proportional to the significance of the rule."

3. The majority of the Marine Fisheries Commission's rules have either been readopted or are underway. Will the remaining 80 rules be prepared like the others were or will they be subject to the more robust DMF rulemaking process including development of an issue paper?

**The remaining 80 rules will be prepared for re adoption like the previous 300 rules.** These rule re adoptions will be developed in a small group, explained in a worksheet, and be reviewed at least once by a workgroup of the RAT, not the full team. New rulemaking outside of these re adoptions will be developed with the "regular" rulemaking process through an issue paper that is reviewed at least twice by the full RAT.

4. Are older versions of the Marine Fisheries Commission rulebooks available digitally?

**Yes, some are.** Rulebooks from 1927 through 1949 have been scanned and are available at DMF Share > Rules Advisory Team > Library > Historical Rulebooks. Rulebooks from 1952 through 1978 have been scanned in sections but have not yet been aggregated and are in the same historical rulebooks folder. Rulebooks after 1978 up to 2003 have not yet been scanned. Rulebooks from 2003 to present are available at DMF Share > RULEBOOK.

5. Each programmatic section has staff that serve on the RAT. What if expertise is needed for a particular rulemaking effort that is not represented by a section's RAT members?

**Communication within each section is paramount.** This is true not only for making sure we use all of the available DMF expertise to develop rules for the Marine Fisheries Commission to our best ability, but also so staff stay informed about rulemaking issues under development. Each RAT member can develop mechanisms to keep other staff in their section informed. One simple way to do this is to forward RAT meeting materials to other staff within a section. Also, there have been many non-RAT staff who were the lead authors for issue papers because they were the subject matter expert.

6. Over the years, sometimes we have waited to undergo rulemaking in the context of development of a Fishery Management Plan (FMP) and other times we undergo rulemaking outside of the FMP process. What is the rule of thumb for deciding which is the best route?

**The answer has changed over time based on additional constraints on the rulemaking process.** A decade ago and longer, we opted to wait to develop rulemaking in the context of FMPs when the rule was central to a particular species or plan. This yielded the most comprehensive result for protection of the resource and management of the fisheries. Since 2013, there have been continued constraints on the rulemaking process such that in most cases, we cannot afford to wait to develop rules in the context of FMPs. The rulemaking process takes longer than ever before to come to completion, so if we wait to begin development of a rule until the start of the next FMP review, protection of the resource may ultimately suffer.

7. Sometimes staff in the RAT email distribution group receives notification and information about a new rulemaking petition that another agency has received. Why are these distributed?

**RAT members will be more informed and prepared to provide assistance if needed for any rulemaking petitions received by the Marine Fisheries Commission in the future if they are familiar with rulemaking petitions generally.** In 2017, [Session Law 2017-211](#) was enacted to provide further regulatory relief to the citizens of North Carolina. Section 1.(a) of the Act requires agencies and the Office of Administrative Hearings to provide additional notice of petitions for rulemaking. The DMF rulemaking coordinator automatically receives these notifications and opts to distribute them to the RAT for its edification about the rulemaking process at large and for familiarity with rulemaking petitions generally since they are a relatively rare event.

8. Why are some rules subject to legislative review before they can become effective?

**Some rules are *automatically* subject to legislative review and other rules *may* be subject, depending on objections to the rule.** Regardless, legislative review adds time to the rulemaking process. In 2019, [Session Law 2019-198](#) was enacted to make changes to future criminal laws related to regulatory offenses. A new statute was added ([G.S. 14-4.1](#)) that requires any rule that is adopted or amended that creates a new criminal offense or otherwise subjects a person to criminal penalties to be automatically subject to legislative review before it can become effective. Upon review, the General Assembly has the authority to introduce a bill specifically disapproving rules, so there is no guarantee that rules will be approved or that they will be approved as submitted. About 130 of the roughly 375 Marine Fisheries Commission rules are automatically subject to legislative review.

Under [G.S. 150B-21.3](#), written objection to a rule from 10 or more people submitted to the Rules Review Commission before it gives final approval of a rule results in the rule being forwarded to the General Assembly for review. This can happen to any rule for which there are at least 10 written objections.

9. What do I do if I am interested in receiving rulemaking information from the RAT or interested in being a member of the RAT?

**Let your supervisor know about your interest.** The DMF rulemaking coordinator works closely with section chiefs and marine patrol captains to adjust RAT membership based on staff expertise and workload. A staff member with interest in the RAT can talk to their supervisor (who in turn talks to the section chief or captain) about being added to the RAT email distribution list as a courtesy copy recipient for information, or about being a member of the RAT.

10. How many times is an issue paper typically reviewed by the RAT for proposed rules and what is the record for most number of reviews?

An issue paper is **typically reviewed two or three times** by the RAT before it is distributed outside of DMF. The **record was 10 reviews** for an issue paper developed from 2006 to 2008 for rulemaking pertaining to the use of live bait managed via 15A NCAC 03I .0104, Introduction and Transfers of Marine and Estuarine Organisms. The issue was related to live eels being shipped into North Carolina and being sold as bait for the recreational striped bass fishery. The concern was that out-of-state eels could be diseased and have a negative impact on N.C. stocks. The underpinnings for the issue paper included a 2005 DMF live bait survey.