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Feb. 4, 2022

MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
Marine Fisheries Commission Office

SUBJECT: Notice of Text for Rulemaking

Issue

Request the N.C. Marine Fisheries Commission (MFC) vote on approval of Notice of Text for Rulemaking to begin the process for the nine joint rules in the 2021-2022 "Package C" in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A.

Findings

- Periodic Review and Readoption of Rules – Requirements
 - N.C.G.S. § 150B-21.3A, enacted in 2013, requires state agencies to review existing rules every 10 years in accordance with a prescribed process that includes rule readoption.
 - On May 17, 2018, the N.C. Rules Review Commission approved the readoption schedule of June 30, 2022 for the nine MFC rules in 15A NCAC 03Q .0101-.0109 and the 11 N.C. Wildlife Resources Commission (WRC) rules in 15A NCAC 10C .0101-.0111, all subtitled "Jurisdiction of Agencies: Classification of Waters".
- Jurisdiction of Fisheries Agencies – Authority
 - N.C.G.S. § 113-132 provides express authority for the MFC and the WRC to make joint rules for "rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters", which is where the jurisdictions of the two agencies overlap.
 - The nine rules in 15A NCAC 03Q .0100 and the 11 rules in 15A NCAC 10C .0100 were originally adopted jointly by the MFC and the WRC. As a result, both agencies must approve readoption of the rules by the June 30, 2022 deadline or the rules will be removed from the N.C. Administrative Code.
- Joint Rules – Actions
 - August 2020 business meeting: the MFC approved Notice of Text for Rulemaking for 15A NCAC 03Q .0100 with no changes proposed to the rules.
 - September 2021 special meeting: the MFC gave final approval of 15A NCAC 03Q .0100 with changes made in consideration of public comments received from the WRC.
 - December 2021 business meeting: the WRC approved Notice of Text for Rulemaking for 15A NCAC 10C .0100 and 48 other associated rules. The public comment period ends March 21, 2022. The proposed changes differ from the changes approved by the MFC to 15A NCAC 03Q .0100.
 - March 2022 special meeting: the MFC is scheduled to vote on approval of Notice of Text for Rulemaking for 15A NCAC 03Q .0100 with no changes proposed to the rules.
 - March 2022: the WRC staff is moving forward the suggestion for the WRC to vote on approval of Notice of Text for Rulemaking for 15A NCAC 10C .0100 with no changes proposed to the rules.
- The 20 joint rules have an earliest effective date of August 1, 2022, except for 15A NCAC 03Q .0107 and 10C .0107 that are automatically subject to legislative review per Session Law 2019-198.

Action Needed

In accordance with N.C.G.S. § 150B-21.3A, the MFC is scheduled to vote on approval of Notice of Text for Rulemaking to begin the process for re adoption of 15A NCAC 03Q .0101-.0109. The rules comprise the MFC's 2021-2022 "Package C" and the approval would include the rule impact analysis and the nine proposed rules.

Recommendation

The N.C. Division of Marine Fisheries recommends the MFC vote on approval to begin the rulemaking process for the nine joint rules in the 2021-2022 "Package C" in accordance with N.C.G.S. § 150B-21.3A. For more information, please refer to the rule impact analysis in the briefing materials, which includes the nine joint rules in the appendix that are proposed with no changes. This is the same rule impact analysis the MFC approved at its August 2020 business meeting.