Rulemaking Update

DEPARTMENT OF ENVIRONMENTAL QUALITY

Marine Fisheries

Marine Fisheries Commission Meeting | Catherine Blum | August 2020
Presentation Outline

• 2020-2021 Rulemaking Cycle
  o “Package A”
  o “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):
  o Shellfish growing waters
  o Shellfish sanitation and processing
  o Shellfish lease user conflicts
  o General regulations: joint
  o Special Secondary Nursery Areas
  o Oyster sanctuaries
# 2020-2021 Rulemaking Cycle (Package A)

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

<table>
<thead>
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<th>Time of Year</th>
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<tbody>
<tr>
<td>February-July 2020</td>
<td>Fiscal analysis of rules prepared by DMF staff and approved by Office of State Budget and Management</td>
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<tr>
<td>August 2020</td>
<td>MFC approves Notice of Text for Rulemaking</td>
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<tr>
<td>October 2020</td>
<td>Publication of proposed rules in the <em>North Carolina Register</em></td>
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<tr>
<td>Oct.-Dec. 2020</td>
<td>Public comment period held</td>
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<tr>
<td>October 2020</td>
<td>Public hearing held (details to be determined)</td>
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<tr>
<td>February 2021</td>
<td>MFC considers approval of permanent rules</td>
</tr>
<tr>
<td>April 2021</td>
<td>Rules reviewed by Office of Administrative Hearings/Rules Review Commission</td>
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<tr>
<td>April 15, 2021</td>
<td>Commercial license sales begin</td>
</tr>
<tr>
<td>May 1, 2021 or TBD</td>
<td>Proposed effective date of rules; some rules are subject to legislative review per S.L. 2019-198 and G.S. 14-4.1.</td>
</tr>
<tr>
<td>May 1, 2021</td>
<td>Rulebook supplement available online</td>
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Permanent Rulemaking Process

1. **Agency submits to State Budget**
   - Agency approves fiscal note (G.S. 150B-19.1(c))

2. **Publication in NC Register** (G.S. 150B-21.2(c))
   - Comment Period (at least 60 days from publication) (G.S. 150B-21.2(c)(g))

3. **Publication on Agency Website** (G.S. 150B-19.1(c))
   - Notice to Interested Persons (G.S. 150B-21.2(d))

4. **Agency reviews fiscal note & public comments** (G.S. 150B-21.2(f) & (g))
   - **Agency makes substantial change**
     - Agency Republishes (G.S. 150B-21.2(g))
   - **Agency adopts rule** (G.S. 150B-21.2(g))
   - **Agency does not adopt rule**
     - Rule Dies (G.S. 150B-21.2(g))

5. **RRC Objects**
   - Agency revises and returns (G.S. 150B-21.12(c))
   - **RRC Objects**
     - Agency does not revise - Rule Dies (G.S. 150B-21.12(d))

   - (submit within 30 days of adoption) (G.S. 150B, Article 2A, Part 3)
     - **RRC Approves**
     - Rule entered into Code (G.S. 150B-21.3(b))

7. **RRC Approves with substantial change**
   - Republish (G.S. 150B-21.1(a3) & (b))

8. **10 or more persons Objected / Rule awaiting Legislative Session** (G.S. 150B-21.3(b2))
   - Rule entered into the Code (G.S. 150B-21.3(b1))
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:
  o Report (complete)
  o Readoption (underway)
### Periodic Review and Expiration of Existing Rules (G.S. 150B-21.3A)

|------------------------|------|----------|----------|---------------|---------------------|---------|------|----------|

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
  o Add five sites
  o Remove two sites
  o 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).