

1 15A NCAC 03P .0102 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES**

4 ~~Administrative-Contested case~~ hearings shall be held in accordance with ~~G.S. 150B, and the administrative hearing~~
5 ~~procedures codified at 15A NCAC 1B .0200.~~Article 3 of Chapter 150B of the General Statutes.

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7 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*

8 *Eff. January 1, 1991;*

9 *Amended Eff. August 1, 1999;*

10 *Readopted Eff. May 1, 2022.*

1 15A NCAC 03P .0201 is proposed for readoption with substantive changes as follows:

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SECTION .0200 - DECLARATORY RULINGS

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15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY

6 At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a
7 declaratory ruling as provided in G.S. ~~150B-4~~150B-4 and rules of this Section.

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9 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;*

10 *Eff. April 1, 1999;*

11 *Readopted Eff. May 1, 2022.*

1 15A NCAC 03P .0202 is proposed for re-adoption with substantive changes as follows:

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3 **15A NCAC 03P .0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**

4 (a) All requests for a declaratory ruling shall be ~~filed-submitted~~ in writing ~~with the Director of the~~ to the Marine
5 Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries,
6 Department of Environment and Natural Resources (DENR), 3441 Arendell Street, P.O. Box 769, Morehead City,
7 North Carolina NC 28557.

8 (b) All requests shall include the following:

- 9 (1) the ~~aggrieved person's~~ petitioner's name and address;
- 10 (2) the rule, ~~statute~~ statute, or order upon which a ruling is desired;
- 11 (3) a ~~concise~~ statement as to whether the request is for a ruling ~~on~~ on:
- 12 (A) the validity of a ~~rule or rule~~ rule;
- 13 (B) ~~on~~ the applicability of a rule, ~~order~~ order, or statute to a given factual situation; or
- 14 (C) a conflict or inconsistency within the Commission or the Department of Environmental
15 Quality regarding interpretation of a law or rule adopted by the Commission;
- 16 (4) arguments or data ~~which that~~ that demonstrate ~~that~~ the petitioner is aggrieved by the rule or statute or its
17 potential application to ~~him~~ the petitioner;
- 18 (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- 19 ~~and~~
- 20 (6) a draft of the proposed ruling; and
- 21 (7) a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an
22 oral argument.

23 ~~(b)(c)~~ A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning
24 the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on
25 the applicability of a rule, order, or statute must shall include a description of the statement of the specific facts to a
26 given factual situation on which the ruling is to be based, and documentation supporting those facts. A request for a
27 ruling on the validity of a Commission rule must state the aggrieved person's reasons for questioning the validity of
28 the rule. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department
29 regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the
30 conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask
31 for both multiple types of declaratory rulings in a single request. A request for a ruling must include or be accompanied
32 by:

- 33 (1) ~~a statement of the facts proposed for adoption by the Commission; and~~
- 34 (2) ~~a draft of the proposed ruling.~~

35 (d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for
36 declaratory ruling. The request to intervene shall be determined by the Commission Chair.

37 ~~(e) Before deciding the merits of the request, the Commission may:~~

- 1 (1) request additional written submissions from petitioner(s);
- 2 (2) request a written response from the Division staff or any other person; or
- 3 (3) hear oral argument from the petitioner(s) and Division staff.

4 ~~(d) Unless the Division waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of facts submitted by the parties.~~

9 ~~(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

12 ~~(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:~~

- 14 (1) the petitioner(s) and the Division cannot agree on a set of facts sufficient to support a meaningful ruling;
- 16 (2) there has been a similar determination in a previous contested case or declaratory ruling;
- 17 (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or
- 19 (4) no genuine controversy exists as to the application of a statute or rule to the factual situation presented.

21 ~~(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:~~

- 23 (1) the request for a ruling;
- 24 (2) any written submissions by the parties;
- 25 (3) the statement of facts on which the ruling was based;
- 26 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- 27 (5) any other matter considered by the Commission in making the decision; and
- 28 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

30 ~~(h) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.~~

33 ~~(i) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~

37 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;*

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Eff. April 1, 1999;
Readopted Eff. May 1, 2022.

1 15A NCAC 03P .0203 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03P .0203 ~~DEFINITION~~DISPOSITION OF REQUESTS FOR DECLARATORY RULING**

4 (a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for
5 declaratory ruling based on the requirements of this Section.

6 (b) Before the Commission decides the merits of the request, the Commission Chair may:

- 7 (1) request additional written submissions from the petitioner;
8 (2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of
9 this Paragraph; and
10 (3) request oral arguments from the petitioner or the petitioner's legal counsel.

11 (c) Unless the Division of Marine Fisheries waives the opportunity to be heard, it shall be a party to any request for
12 declaratory ruling. The Division shall be allowed to present a written response and oral arguments to the Commission
13 at a regularly scheduled meeting.

14 (d) The Commission shall make a decision to grant or deny the request in accordance with G.S. 150B-4.

15 (e) The Commission shall deny the request upon making any of the following findings:

- 16 (1) the request is not complete;
17 (2) the petitioner is not a person aggrieved;
18 (3) there has been a similar determination in a previous contested case or declaratory ruling;
19 (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or
20 federal court;
21 (5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation
22 presented;
23 (6) the factual context put forward as the subject of the declaratory ruling was considered upon the
24 adoption of the rule being questioned, as evidenced by the rulemaking record;
25 (7) the information provided by the petitioner, the Department, or any interveners does not support a
26 determination that a rule is invalid; or
27 (8) there is no material conflict or inconsistency within the Commission or Department regarding the
28 law or rule identified by the petitioner.

29 (f) The Commission shall keep a record of each declaratory ruling, which shall include the following items:

- 30 (1) the request for a ruling;
31 (2) any written submission by a party;
32 (3) the statement of facts on which the ruling was based;
33 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
34 (5) any other matter considered by the Commission in making the decision; and
35 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons
36 therefore.

1 (g) For purposes of ~~Rule .0202~~ of this Section, a declaratory ruling shall be deemed to be "~~in effect~~" until in effect
2 until:

3 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the
4 statute or rule are amended or altered; ~~amended, altered or repealed~~;

5 (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that
6 is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;

7 (3) ~~until~~ the Commission changes the declaratory ruling ~~prospectively for good reasons~~; prospectively;
8 or

9 (4) ~~until~~ any court sets aside the declaratory ruling in litigation between the Commission or Department
10 of ~~Environment and Natural Resources~~ Environmental Quality and the party requesting the
11 ruling; ~~or until any court of the Appellate Division of the General Court of Justice shall construe~~
12 ~~the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable~~
13 ~~with the declaratory ruling~~.

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15 *History Note:* Authority G.S. 113-134; 113-182; 143B-289.52; 150B-4;
16 Eff. April 1, 1999;
17 Readopted Eff. May 1, 2022.

1 15A NCAC 03P .0301 is proposed for readoption with substantive changes as follows:

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3 **SECTION .0300 - PETITIONS FOR RULEMAKING**
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5 **15A NCAC 03P .0301 FORM AND CONTENTS OF ~~PETITION~~PETITIONS FOR RULEMAKING**

6 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission
7 (~~hereinafter referred to as the Commission~~) shall ~~make his~~ submit the person's request in a written petition ~~addressed~~
8 ~~to the Chairman of the Marine Fisheries Commission Chair and submitted~~ addressed to the Marine Fisheries
9 Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC

10 28557. ~~Commission staff at:~~
11 ~~Marine Fisheries Commission~~
12 ~~Division of Marine Fisheries~~
13 ~~PO Box 769~~
14 ~~Morehead City, North Carolina 28557.~~

15 (b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

- 16 (1) ~~the text of the proposed rule(s);~~
17 (2) ~~the statutory authority for the agency to promulgate the rule(s);~~
18 (3) ~~a statement of the reasons for adoption of the proposed rule(s);~~
19 (4) ~~a statement of the effect on existing rules;~~
20 (5) ~~copies of any documents and data supporting the proposed rule(s);~~
21 (6) ~~a statement of the effect of the proposed rule(s) on existing practices in the area involved, including~~
22 ~~an estimate of cost factors for persons affected by the proposed rule(s);~~
23 (7) ~~a description of those most likely to be affected by the proposed rule(s); and~~
24 (8) ~~the name(s) and address(es) of the petitioner(s).~~
25 (1) the text of the proposed rules for adoption or amendment;
26 (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing
27 rules;
28 (3) a statement of the effect of the requested rule changes on:
29 (A) existing rules;
30 (B) existing practices in the area involved; and
31 (C) those most likely to be affected by the requested rule changes; and
32 (4) the name and address of the petitioner.

33 (c) The petitioner may include the following information within the request:

- 34 (1) the statutory authority for the agency to promulgate the rules;
35 (2) a statement of the cost factors for persons affected by the proposed rules;
36 (3) a statement explaining the computation of the cost factors;

1 (4) a description, including the names and addresses, if known, of those most likely to be affected by
2 the proposed rules; and

3 (5) documents and data supporting the proposed rules.

4 ~~(e) When petitions and supporting documents and data exceed 10 pages in length, 15 copies of the entire petition and~~
5 ~~any attachments shall be submitted.~~

6 (d) In its review of the proposed rules, the Commission shall consider:

7 (1) whether it has the authority to adopt the rules;

8 (2) the effect of the proposed rules on existing rules, programs, and practices;

9 (3) probable costs and cost factors of the proposed rules; and

10 (4) the impact of the rules on the public and regulated entities.

11 ~~(d)(e) Petitions~~ A petition failing to contain the required information shall be returned by the Marine Fisheries
12 Commission ~~Chairman~~ Chair.

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14 *History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20;*
15 *Eff. April 1, 1999;*
16 *Readopted Eff. May 1, 2022.*

1 15A NCAC 03P .0302 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03P .0302 REVIEW OF RULEMAKING PETITIONS BY A COMMITTEE OF THE**
4 **COMMISSION**

5 (a) The Marine Fisheries Commission ~~Chairman~~Chair may refer ~~duly submitted petitions~~complete petitions, as set
6 forth in Rule .0301 of this Section, to the appropriate standing advisory ~~committee(s)~~committees or other advisory
7 ~~committee(s)~~committees of the Commission for review and recommended action. Copies of petitions for rulemaking
8 shall be distributed to the Commission members when referred to a committee of the Commission.

9 (b) ~~The Chairman~~Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to
10 review a submitted petition for rulemaking shall announce the date of a meeting to consider the ~~petition within 10~~
11 ~~days of the assignment of the~~petition.

12 (c) At least 15 days before the Committee meeting, the Committee ~~Chairman~~Chair shall send notice of the Committee
13 meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for
14 rulemaking.

15 (d) ~~The~~If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition
16 for rulemaking to the Committee. The Fisheries Director, through Division of Marine Fisheries staff, or their legal
17 counsel may make a presentation to the Committee.

18 (e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating
19 rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations
20 before the Committee.

21 ~~(e)~~(f) InterestedAt least 10 days before the Committee meeting, interested persons ~~must~~shall request the opportunity
22 to make a presentation to the ~~Committee(s)~~Committees through the ~~Committee(s) chair(s)~~Chairs of the Committees.
23 The request shall:

- 24 (1) state the interest of the ~~person~~person;
25 (2) state the person's position on the petition for rulemaking, rulemaking; and
26 (3) be accompanied by supporting materials.

27 ~~The Chairman of the Committee will determine whether additional interested persons make oral presentations before~~
28 ~~the Committee.~~

29 (f) ~~The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee~~
30 ~~before it makes a recommendation on the petition for rulemaking.~~

31 (g) During the ~~Committee's~~Committee's review, members of the Commission, other than Committee members, who
32 are present may participate as a member of the Committee in discussions of the petition but may not vote on the
33 recommended action on the petition.

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35 *History Note: Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20;*
36 *Eff. April 1, 1999;*
37 *Readopted Eff. May 1, 2022.*

1 15A NCAC 03P .0303 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 03P .0303 PRESENTATION OF RULEMAKING PETITIONS TO THE COMMISSION**

4 (a) ~~Petitions~~ A complete petition for rulemaking, ~~when deemed complete by the Marine Fisheries Commission~~
5 ~~Chairman,~~ as set forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its
6 consideration and determination at the next regularly scheduled meeting of the Commission.

7 (b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition
8 and the Committee's recommended action shall be presented through the Chair of the Committee or other designated
9 member of the Committee during the business session of the Commission. Unless the Commission Chair rules
10 otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the
11 Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the Department of
12 Environmental Quality, the petitioner, and the petitioner's legal counsel.

13 (c) For a petition not referred to a Committee, the Commission Chair shall allow one interested person to present the
14 viewpoint of those who oppose initiating rulemaking. The Commission Chair may determine whether additional
15 interested persons shall make oral presentations before the Commission. At least 10 days before the Commission
16 meeting, interested persons shall request the opportunity to make a presentation to the Commission through the
17 Commission Chair. The request shall:

- 18 (1) state the interest of the person;
19 (2) state the person's position on the petition for rulemaking; and
20 (3) be accompanied by supporting materials.

21 ~~(b)(d)~~ Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission
22 shall:

- 23 (1) grant the petition in writing, notify the petitioner in writing, and initiate rulemaking proceedings in
24 accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision
25 in writing; 150B-20; or
26 (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial
27 to the ~~person(s)~~ person or persons who submitted the petition.

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29 *History Note:* Authority G.S. 113-134; 113-182; 143B-289.51; 143B-289.52; 150B-20;
30 Eff. April 1, 1999;
31 Readopted Eff. May 1, 2022.

1 15A NCAC 03P .0304 is proposed for repeal through readoption as follows:

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3 **15A NCAC 03P .0304 RECOURSE TO DENIAL OF THE PETITION**

4 ~~If the Marine Fisheries Commission denies the petition for rulemaking, the petitioner(s) may seek judicial review of~~
5 ~~the denial under G.S. 150B, Article 4 of Chapter 150B of the General Statutes.~~

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7 *History Note: Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20;*

8 *Eff. April 1, 1999;*

9 *Repealed Eff. May 1, 2022.*