



## *Periodic Review and Expiration of Existing Rules*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

**Marine Fisheries**

Marine Fisheries Commission | Catherine Blum | Feb. 16, 2017



# *Periodic Review and Expiration of Existing Rules*

- Periodic Review and Expiration of Existing Rules (G.S. 150B-21.3A) was added to the North Carolina Administrative Procedure Act in 2013.
- Agencies must conduct a periodic review of their rules every 10 years using a process and schedule established by the Rules Review Commission or the rules expire.
- Marine Fisheries Commission rules are found in Chapter 03 and Chapter 18A of Title 15A of the North Carolina Administrative Code.
- Rules in Chapter 03 are scheduled to be reviewed by the Rules Review Commission in December 2017 per 26 NCAC 05 .0211. Rules in Chapter 18A are scheduled to be reviewed in January 2019.

# *Periodic Review Process*

- Review and classify each rule citation.
  - *Necessary with substantive public interest* - the agency has received public comment within the last two years; it affects property interest or a person might object to the rule.
  - *Necessary without substantive public interest* - the agency has not received public comment within the last two years or the rule simply provides contact information.
  - *Unnecessary* - the agency determined the rule is obsolete, redundant or otherwise no longer needed.
- Seek input on initial draft agency determination of classification from Marine Fisheries Commission.
- Submit recommendation on initial agency determination to the Department of Environmental Quality.

# *Periodic Review Process*

- Publish initial agency determination for 60-day public comment period (Spring 2017). Public comments must be in writing and have merit.
- Compile report that responds to comments received and amends initial agency determination if necessary.
- Seek input and approval of report from the Marine Fisheries Commission (August 2017).

# *Periodic Review Process*

- Submit report through the Department of Environmental Quality to the Rules Review Commission (October 2017) for consideration at its December 2017 meeting.
- The Rules Review Commission sends report to Joint Legislative Administrative Procedures Oversight Committee for its consideration.

# *Periodic Review Process*

- Necessary with substantive public interest - the agency has received public comment within the last two years; it affects property interest or a person might object to the rule.  
**Final determination:** Rules must be readopted or they expire.
- Necessary without substantive public interest - the agency has not received public comment within the last two years or the rule simply provides contact information.  
**Final determination:** Rules do not expire nor need to be readopted if there is no change.
- Unnecessary - the agency determined the rule is obsolete, redundant or otherwise no longer needed.  
**Final determination:** Rules expire and are removed from the Code.

# Summary

Rules	2017	2018	2019	2020	2021
Chapter 03	Report	Rulemaking			
Chapter 18A		Report	Rulemaking		

# *Title 15A Chapter 03 Rules*

- There are currently 211 rules in Chapter 03.
- Nine of these are jointly adopted by the Marine Fisheries Commission and the Wildlife Resources Commission and are found in Subchapter 03Q, “Jurisdiction of Agencies: Classification of Waters,” Section .0100, “General Regulations: Joint.”
- The Wildlife Resources Commission has 11 rules that are also jointly adopted by both agencies and are found in Subchapter 10C, “Inland Fishing Regulations,” Section .0100, “Jurisdiction of Agencies: Classification of Waters.”
- For the required steps in the periodic review process, both agencies must approve both sets of rules.
- As a result, the rules in 03Q .0100 will be handled separately from all other rules in Chapter 03.
- The draft report on the rules in 10C .0100 will be brought to the Marine Fisheries Commission in May 2017.





# *Subchapter 03Q .0100 Rules*

- Nine rules are found in Subchapter 03Q, “Jurisdiction of Agencies: Classification of Waters,” Section .0100, “General Regulations: Joint.”
- The draft report classifies all nine rules as “necessary with substantive public interest.”
- After the report phase, these rules must be readopted or they expire.
- Rules will need to be jointly readopted by the Marine Fisheries Commission and the Wildlife Resources Commission.



# *All Other Rules in Chapter 03*

- There are 202 rules found in the remainder of Title 15A Chapter 03 of the North Carolina Administrative Code.
- The draft report classifies:
  - 165 rules as “necessary with substantive public interest.”
  - 34 rules as “necessary without substantive public interest.”
  - Three rules as “unnecessary.”
- Following the final report, rules deemed necessary *with* substantive public interest must be readopted or they expire. Rules deemed necessary *without* substantive public interest will receive a 10-year expiration date. Unnecessary rules will expire.



# *All Other Rules in Chapter 03*

## “Unnecessary” Rules

Rule	Title
03S	Economic Assistance to the Fishing Industry
03S .0101	General
03S .0102	Grants to Commercial Shrimping Industry for Economic Losses Due to Foreign Imported Shrimp
03S .0103	Grants to Commercial Blue Crabbing Industry



# *All Other Rules in Chapter 03*

## “Necessary Without Substantive Public Interest” Rules

Rule	Title
03H .0102	Scope of Management
03H .0103	Proclamations, General
03I .0102	Temporary Suspension of Rules
03I .0103	Confiscation and Disposition
03I .0107	Endangered or Threatened Species
03I .0110	Military Danger Zones and Restricted Areas
03I .0116	Coral and Live Rock
03I .0119	Prohibited Fishing Activity Due to Public Health or Safety
03I .0121	Maps and Marking



# All Other Rules in Chapter 03

## “Necessary Without Substantive Public Interest” Rules (Cont.)

Rule	Title
03K .0110	Public Health and Control of Oysters, Clams, Scallops, and Mussels
03M .0508	Sturgeon
03M .0512	Compliance with Fishery Management Plans
03N .0101	Scope and Purpose
03N .0103	Nursery Area Boundaries
03N .0106	Anadromous Fish Spawning Area Boundaries
03O .0506	Special Permit Required for Specific Management Purposes
03Q .0201	Specific Classification of Waters
03Q .0202	Descriptive Boundaries for Coastal-Joint-Inland Waters



# *All Other Rules in Chapter 03*

## “Necessary Without Substantive Public Interest” Rules (Cont.)

Rule	Title
03R .0101	Sea Turtle Sanctuary
03R .0102	Military Danger Zones and Restricted Areas
03R .0103	Primary Nursery Areas
03R .0104	Permanent Secondary Nursery Areas
03R .0106	Trawl Nets Prohibited
03R .0107	Designated Pot Areas
03R .0108	Mechanical Methods Prohibited
03R .0109	Taking Crabs with Dredges
03R .0110	Crab Spawning Sanctuaries



# *All Other Rules in Chapter 03*

## “Necessary Without Substantive Public Interest” Rules (Cont.)

Rule	Title
03R .0111	Purse Seines Prohibited
03R .0113	Pound Net Set Prohibited Areas
03R .0114	Shrimp Trawl Prohibited Areas
03R .0115	Anadromous Fish Spawning Areas
03R .0116	Designated Seed Oyster Management Areas
03R .0117	Oyster Sanctuaries
03R .0118	Exempted Crab Pot Escape Ring Areas



# *Next Steps*

- Vote to approve draft report on 15A NCAC 03Q .0100 rules to proceed to public notice, per G.S. 150B-21.3A (nine rules)
- Vote to approve draft report on all other 15A NCAC 03 rules to proceed to public notice, per G.S. 150B-21.3A (202 rules)



# *Questions ?*