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MEMORANDUM

TO: N.C. Marine Fisheries Commission

FROM: Catherine Blum, Rulemaking Coordinator
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SUBJECT: Rulemaking and Periodic Review and Expiration of Existing Rules

Issue

Update the N.C. Marine Fisheries Commission (MFC) on the status of rulemaking in support of the 2024-2025 and 2025-2026 rulemaking cycles. Request the MFC vote on its preferred management option and associated proposed rulemaking language for one issue under development in the 2026-2027 rulemaking cycle. Request the MFC vote to approve the initial determination of its rules and proceed to public notice for four groups of rules in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A.

Findings

- 2024-2025 and 2025-2026 Rulemaking Cycles – Update
 - At its August 2024 business meeting, the MFC began the process for eight rules about pot marking requirements, false albacore management, and the Interstate Wildlife Violator Compact. At its May 2025 business meeting, the MFC began the process for nine rules about permits, and franchises and shellfish leases.
 - The Interstate Wildlife Violator Compact rules became effective June 1, 2025.
 - The pot marking requirements, false albacore management, permits, and franchises and shellfish lease rules will be available for legislative review in the 2026 short session.
- 2026-2027 Rulemaking Cycle – **Action**
 - Per the MFC's May 23, 2024, and August 21, 2025, motions, the N.C. Division of Marine Fisheries (DMF) developed an issue paper for the management of Atlantic bonito.
 - At its February 2026 business meeting, the MFC will receive the issue paper and be asked to vote on its preferred management option so the required fiscal analysis can be developed, and the formal rulemaking process can be ready to begin at the MFC's May 2026 business meeting.
 - It is important to note that harvest restrictions would not automatically go into effect upon the effective date of a proposed rule except for the five-fish recreational bag limit per person per day included in Option 4; additional steps must occur, as outlined in this memo.
- Periodic Review and Expiration of Existing Rules – **Action**
 - North Carolina 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 a report phase, followed by rule readoption.
 - To comply with the periodic review schedule adopted by the Rules Review Commission (RRC) for the second iteration of the requirements, the MFC is scheduled to vote to approve the initial agency determination of its rules and proceed to public notice for four groups of rules.

Action Needed

The MFC is scheduled to vote on its preferred management option and associated proposed rulemaking language for Atlantic bonito management at its February 2026 business meeting. Additionally, in support of the Periodic Review and Expiration of Existing Rules per N.C.G.S. § 150B-21.3A, the MFC is scheduled to vote on the initial determination of its rules and to proceed to public notice for four groups of rules (15A NCAC 03Q .0100; 15A NCAC 03; 15A NCAC 10C .0100; 15A NCAC 18A .0100, .0300-.0900, .3400).

2024-2025 Rulemaking Cycle (8 rules)

At its August 2024 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for eight rules about pot marking requirements, false albacore management, and the Interstate Wildlife Violator Compact. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. On October 1, 2024, a news release was issued and the proposed rules were published in the *N.C. Register*, beginning the public comment period. The MFC accepted public comments on the proposed rules from October 1 through December 2, 2024. A public hearing was held on October 30, 2024. The public comments received were presented to the MFC at its March 2025 business meeting when it gave final approval of the rules.

The RRC approved two of the rules on April 24, 2025; both rules will be available for legislative review in the 2026 short session (pots, false albacore). The RRC approved five rules on May 29, 2025; one rule was withdrawn as it was determined to be unnecessary. These five rules became effective June 1, 2025 (Interstate Wildlife Violator Compact; 15A NCAC 03O .0600). A summary of the two subjects for which the proposed rules are pending legislative review is provided below.

POT MARKING REQUIREMENTS RULE AMENDMENTS (1 rule)

Proposed amendments would simplify pot marking requirements for commercial fishermen by requiring only one of three ways to mark pot buoys, not two ways: 1) gear owner's current motorboat registration number; or 2) gear owner's U.S. vessel documentation name; or 3) gear owner's last name and initials. The current rule requires the gear owner's last name and initials be identified on each buoy as a baseline. Then, if a vessel is used, the identification must also include either the gear owner's current motorboat registration number or the gear owner's U.S. vessel documentation name. There have been no problems with pot identification and pot identification would be sufficient via a single identifier. The proposed amendments would simplify the requirements and grant some relief to commercial fishermen that use pots in their commercial fishing operation. The rule is automatically subject to legislative review pursuant to Session Law 2019-198 and N.C.G.S. § 14-4.1.

FALSE ALBACORE MANAGEMENT RULE ADOPTION (1 rule)

The proposed adoption of this rule would provide a mechanism to implement management measures to cap harvest when the false albacore fishery landings exceed a threshold of 200% of average landings from both sectors combined from 2018 to 2022. Harvest restrictions would be implemented if the threshold is exceeded as a means to prevent further expansion of the false albacore fisheries beyond the threshold. Currently, there are no rules in place for management of false albacore in North Carolina. There is no baseline stock assessment for false albacore and thus, no biological basis for reducing harvest. The only mechanism to monitor false albacore is through annual landings in North Carolina, which is not a measure for sustainability of the stock. While there is no need to manage to meet sustainability requirements, the MFC is seeking proactive management of false albacore to limit expansion of new and existing fisheries. Management options would include commercial trip limits,

recreational bag limits, and recreational vessel limits. The rule is subject to legislative review pursuant to N.C.G.S. § 150B-21.3.

2025-2026 Rulemaking Cycle (9 rules)

At its May 2025 business meeting, the MFC approved Notice of Text for Rulemaking to begin the process for nine rules about permits, and franchises and shellfish leases. A table showing the timing of the steps in the process is included in the rulemaking section of the briefing materials. On August 1, 2025, a news release was issued and the proposed rules were published in the *N.C. Register*, beginning the public comment period. The MFC accepted public comments on the proposed rules from August 1 through September 30, 2025. A public hearing was held on August 26, 2025. The public comments received were presented to the MFC at its November 2025 business meeting when it gave final approval of the rules. The RRC approved the rules on December 18, 2025; the rules will be available for legislative review in the 2026 short session. A summary of the proposed rules by subject is provided below.

PERMIT RULE AMENDMENTS (5 rules) (15A NCAC 03I .0101, .0114, 03O .0501-.0503)

Consistent with N.C.G.S. § 150B-19.1, Requirements for agencies in the rule-making process, DMF employees reviewed several MFC rules with permit requirements and suggested amendments to several rules that would achieve a variety of actions. These actions would add requirements to permanent rules that are no longer variable in nature, increase efficiencies for quota monitoring, protect DMF employees and improve data collection and public health protection, reduce the burden on regulated stakeholders, clarify rules, and remove outdated or unnecessary requirements from rules.

An issue paper was provided to the MFC at its May 2025 business meeting that provides information about the affected permits, processes, and requirements, as well as a detailed description of the proposed rule amendments, which are expected to accomplish the following:

- Update and clarify MFC rules, including:
 - Adding four permits to permanent rule that are currently issued by proclamation;
 - Clarifying a fish dealer is required to submit a trip ticket for fish not sold consistent with N.C. law and MFC rules for commercial harvest reporting requirements;
 - Relocating from proclamation to rule the permit condition that makes it unlawful to refuse to allow DMF employees to obtain data for the conservation and management of marine and estuarine resources;
 - Broadening the definition of "educational institution" to better align with the original purpose of two permits;
 - Adding links to webpages in rules for supporting information that can change frequently; and
 - Repealing the Horseshoe Crab Biomedical Use Permit;
- Reduce burden on regulated stakeholders, including:
 - Adding email as an additional means to satisfy call-in requirements for two permits; and
 - Removing the requirement to notarize a permit application, instead requiring the initial permit general condition form to be notarized. This is a more appropriate time in the permit issuance process to verify a permittee's identity; and
- Achieve efficiencies for quota monitored fisheries by requiring any seafood dealer that reports trip tickets electronically to report quota monitoring logs electronically.

CONFORMING RULE AMENDMENTS FOR FRANCHISES AND SHELLFISH LEASES (5 rules) (15A NCAC 03I .0101, 03O .0201, .0207, .0208, .0210)

Shellfish franchises recognized under N.C.G.S. § 113-206 are perpetual. The DMF has understood that because franchises are perpetual, the DMF does not have the authority to terminate franchises and thus subjecting a franchise to production requirements would have no consequence. The N.C. General Assembly codified this understanding with the passage of Session Law 2024-32, Section 5.(a), which removed franchises from the production requirements of Session Law 2019-37, Section 3. The MFC's authority over private and protected deeded rights of a shellfish franchise is limited to subjects such as proper marking requirements and permitting of the aquaculture activities occurring on a franchise. So, proposed amendments include the removal of franchises from all shellfish production requirements, as the production requirements are grounds for termination of a leasehold only. Proposed amendments also remove franchises from the rule for termination procedures.

Additional proposed amendments in 15A NCAC 03O .0201, in Paragraphs (d) through (g), clarify production requirements for shellfish leases based on the date a shellfish lease was granted or last renewed. Additional amendments to Paragraphs (i) and (j) clarify who determines eligibility for additional shellfish lease acreage, the time at which the determination of eligibility for additional acreage occurs, what is considered additional shellfish lease acreage, and what is considered acres under a shellfish lease. An issue paper was provided to the MFC at its May 2025 business meeting that provides background information and a detailed description of the proposed rule amendments.

While clarifying amendments are proposed in this issue paper for shellfish leaseholders, it is important to note that the primary reason for the proposed rule amendments is to undertake a paper exercise to align MFC rules with current DMF procedures and N.C. General Assembly authority for shellfish aquaculture, neither of which has changed in practice in recent years relative to requirements for franchises. This issue paper presents a single option for consideration, as it is the only option that achieves the objective of the proposed rule changes: to align with current statutory authority and DMF procedures for franchises and shellfish leases, consistent with N.C. Session Law 2019-37, Section 3 as amended by N.C. Session Law 2024-32, Section 5.(a), as well as rulemaking requirements in the Administrative Procedure Act. This option complies with State law and clarifies MFC rules by removing out-of-date requirements, but it requires undergoing the lengthy rulemaking process.

2026-2027 Rulemaking Cycle (potentially 1 rule)

At its May 2024 business meeting, the MFC passed a motion to request DMF staff develop an issue paper for Atlantic bonito management, including landings information and proposed rule language, using the previous sheepshead issue paper (February 11, 2013) as a model to follow. Discussions among commissioners noted concerns expressed by recreational stakeholders about angler behavior changing in targeting Atlantic bonito in more recent years and the potential need to implement a recreational bag limit. Further concerns expressed by the MFC identified limited information about Atlantic bonito in this part of the Atlantic Ocean and no measure of stock status for the population, and whether these recent increases in recreational catches may not be due to more fish, but rather due to changes in fishing tactics and new technologies available to recreational anglers to improve their success in catching Atlantic bonito when available in state waters. Commissioners did not express concern for commercial catches due to a limited shelf life as a fresh product and not being desirable frozen as likely reasons behind no similar increase in commercial harvest occurring. Potential waste of the resource was discussed, since there are no current limits on Atlantic bonito. The MFC also identified the need to learn more about the fisheries and develop a rule to implement regulations to get ahead of a potential problem.

Commissioners continued discussions on Atlantic bonito at the August and November 2024, and May 2025 MFC business meetings with an urgency to be proactive in their management and continued to stress the need to implement a bag limit in the recreational fishery. After key DMF vacancies were filled, DMF staff presented background information about the life history and catch characteristics of Atlantic bonito to the MFC at its August 2025 business meeting. Commissioners discussed that Atlantic bonito appear to behave differently off southeast North Carolina than in other locations along the coast, showing preference for structure and pondered if these preferences are associated with spawning, thereby making Atlantic bonito more vulnerable to harvest. Commissioners mentioned that the presentation illustrated the increasing trends in recreational landings with smaller fish being caught in recent years and discussed the potential for implementing both a bag limit and possibly a size limit on the recreational sector. The MFC passed a motion to ask the DMF staff to bring proposed rulemaking language for a five-fish recreational bag limit per person (per day) for Atlantic bonito to its November 2025 business meeting.

The DMF developed an issue paper for the management of Atlantic bonito containing background information, authority for management, and discussion of potential management options, including a proposed rule. The issue paper is included in the rulemaking section of the briefing materials and will be presented to the MFC at its February 2026 business meeting when it is scheduled to vote on its preferred management option for Atlantic bonito. If the MFC selects a proposed rule as its preferred management option, a fiscal analysis will be developed and presented to the Office of State Budget and Management for approval. If the fiscal analysis is approved, at its May 2026 business meeting the MFC would be asked to vote on approval of Notice of Text for Rulemaking to begin the process as part of its 2026-2027 annual rulemaking cycle. A table showing the approximate timing of the steps in the process is included in the rulemaking section of the briefing materials. Additional details will be added to the table approaching the start of the formal rulemaking process. At this time, no other proposed rules are under development for this cycle.

The Atlantic bonito management issue paper presents four proposed management options. If the MFC selects Option 1, *Status quo*, there would continue to be no rule in place for the management of the species; the proposed rulemaking process would end. If the MFC selects Options 2, 3, or 4, a fiscal analysis would be developed so that the formal rulemaking process could begin at the MFC's May 2026 business meeting. For Options 2 and 3, the anticipated earliest effective date of the proposed rule would be February 1, 2027. For Option 4, the proposed rule would automatically be subject to legislative review in the 2028 short session per Session Law 2019-198 and N.C.G.S. § 14-4.1.

It is important to note that regardless of when a proposed rule would become effective, harvest restrictions would not automatically go into effect except for the five-fish recreational bag limit per person per day included in Option 4. Any other harvest restrictions would undergo a process including the DMF presenting the most recent data to the MFC, MFC consent that harvest restrictions are needed based on the data, outreach and education to the regulated public that management will change, and identification of an appropriate effective date for the proclamation that would be issued to implement the restrictions so the regulated public can prepare.

Periodic Review and Expiration of Existing Rules (335 rules)

North Carolina 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 a report phase, followed by rule readoption. To comply with the periodic review schedule adopted by the RRC for the second iteration of

the requirements, the MFC is scheduled to vote at its February 2026 business meeting to approve the initial agency determination of its rules and proceed to public notice for four groups of rules.

VOTE TO APPROVE INITIAL AGENCY DETERMINATION OF RULES AND PROCEED TO PUBLIC NOTICE

15A NCAC 03Q .0100 (9 RULES)

ALL OTHER 15A NCAC 03 RULES (194 RULES)

15A NCAC 10C .0100 (11 RULES)

15A NCAC 18A .0100, .0300-.0900, .3400 (132 RULES)

The Office of Administrative Hearings (OAH) created an Excel worksheet for each group of the above-listed rules. This document is called a report. The report lists all of an agency's existing rules in the N.C. Administrative Code as of January 1, 2024. The report contains the following information:

- Agency name;
- Rule chapter/subchapter/section;
- Rule citation;
- Rule name; and
- Date and last agency action on the rule.

The first step in the process is for an agency to make an initial determination as to whether each rule is necessary or unnecessary. A necessary rule is any rule other than an unnecessary rule. An unnecessary rule is a rule the agency determined to be obsolete, redundant, or otherwise not needed. DMF staff reviewed the MFC rules and have given all the rules the initial determination of “necessary” for the MFC’s consideration and approval. Additionally, if a rule is required to implement or conform to federal regulation, the agency provides the citation to the federal regulation in the report; the MFC does not have any such rules.

After initial determinations are made by the agency, the report is posted for public comments for no less than 60 days. This means that the agency posts the report on the agency’s website, provides notice to interested parties, and submits the report to OAH for posting on OAH’s website. If the MFC approves its four reports for public notice, the public comment period will be March 2 through May 1, 2026. Public comments can be made on the rules and the agency’s initial determination of the rules but must be made in writing and must have merit. A public comment has merit if it addresses the specific substance of the rule.

In the “Periodic Review and Expiration of Existing Rules” section of the briefing materials are the MFC’s four reports, as listed at the top of this section of the memo. All the rules are in Title 15A, which is the Department of Environmental Quality. The nine MFC rules in 15A NCAC 03Q .0100 are jointly adopted with the Wildlife Resources Commission (WRC). The 11 WRC rules in 15A NCAC 10C .0100 are jointly adopted with the MFC. All 20 jointly adopted rules set requirements for joint fishing waters. Rules in Chapter 03 are for the management of marine fisheries, while rules in Subchapter 18A are for the management of shellfish sanitation and recreational water quality. Following a presentation about the four reports at its February 2026 business meeting, the MFC is scheduled to vote on approval of the initial determinations of the rules in the reports and to proceed to public notice per N.C.G.S. § 150B-21.3A.

After the public comment period, the agency must review the public comments and prepare a brief response addressing the merits of each comment. This information becomes the final report and is

scheduled to be voted on by the MFC for approval at its August 2026 business meeting. The final report is then submitted to the RRC, which, if approved, is forwarded to the Joint Legislative Administrative Procedure Oversight Committee for final determination. The MFC's reports are due to the RRC for its January (15A NCAC 03Q .0100; all other 03 rules; 10C .0100) and March (15A NCAC 18A .0100, .0300-.0900, .3400) 2027 meetings.

The second part of the process is the re-adoption of rules. The final report determines the process for re-adoption. A necessary rule must be readopted as if it was a new rule. An unnecessary rule will expire at the end of the report process and be removed from the N.C. Administrative Code. The RRC works with each agency to consider the agency's rulemaking priorities in establishing a deadline for the re-adoption of rules. This consultation process is expected to occur in the spring of 2027. It is anticipated that the MFC will need to readopt all 335 of its rules that are subject to the Periodic Review requirements as if they are new rules. Rules can be amended during readoption and fiscal analysis of the rules will still be required. Based on the MFC's rulemaking priorities, the readoption process is expected to take several years to complete.