

15A NCAC 03P .0203 DISPOSITION OF REQUESTS FOR DECLARATORY RULING

- (a) The Marine Fisheries Commission Chair shall make a determination on the completeness of a request for declaratory ruling based on the requirements of this Section.
- (b) Before the Commission decides the merits of the request, the Commission Chair may:
 - (1) request additional written submissions from the petitioner;
 - (2) allow the petitioner to file a reply to the response submitted in accordance with Subparagraph (1) of this Paragraph; and
 - (3) request oral arguments from the petitioner or the petitioner's legal counsel.
- (c) Unless the Division of Marine Fisheries waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The Division shall be allowed to present a written response and oral arguments to the Commission at a regularly scheduled meeting.
- (d) The Commission shall make a decision to grant or deny the request in accordance with G.S. 150B-4.
- (e) The Commission shall deny the request upon making any of the following findings:
 - (1) the request is not complete;
 - (2) the petitioner is not a person aggrieved;
 - (3) there has been a similar determination in a previous contested case or declaratory ruling;
 - (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
 - (5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation presented;
 - (6) the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
 - (7) the information provided by the petitioner, the Department, or any interveners does not support a determination that a rule is invalid; or
 - (8) there is no material conflict or inconsistency within the Commission or Department regarding the law or rule identified by the petitioner.
- (f) The Commission shall keep a record of each declaratory ruling, which shall include the following items:
 - (1) the request for a ruling;
 - (2) any written submission by a party;
 - (3) the statement of facts on which the ruling was based;
 - (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
 - (5) any other matter considered by the Commission in making the decision; and
 - (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.
- (g) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
 - (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
 - (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
 - (3) the Commission changes the declaratory ruling prospectively; or
 - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environmental Quality and the party requesting the ruling.

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