

SUBCHAPTER 03P - ADMINISTRATIVE PROCEDURES

SECTION .0100 - HEARING PROCEDURES

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

(a) Except in cases where summary suspension is applicable, before the Division of Marine Fisheries may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice shall be given to the license holder that the license holder may file a petition for a contested case in accordance with G.S. 113-171(e) and may request a final agency decision in accordance with G.S. 113-171(f).

(b) For the purpose of this Rule and in accordance with G.S. 150B-2, "permit" includes "certification" and "certificate of compliance."

(c) Except in cases where G.S. 113-171, 15A NCAC 03O .0114, or summary suspension is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit, notice shall be given to the permittee that the permittee:

- (1) may request an opportunity to show compliance with all requirements for retention of the permit by submitting a statement in writing to the personnel designated in the notice to commence proceedings; and
- (2) has the right, through filing a request for a contested case hearing in the Office of Administrative Hearings, to a hearing before an administrative law judge.

(d) For a permit related to endangered or threatened species or a species managed by a quota, any statements submitted by the permittee to show compliance with all requirements for retention of the permit shall be postmarked or emailed within five days of receipt of the notice to commence proceedings. For all other permits, any statements submitted by the permittee to show compliance with all requirements for retention of the permit shall be postmarked or emailed within 10 days of receipt of the notice to commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and if mailed, sent to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, or if emailed, sent to the email address provided in the notice for the designated personnel.

(e) Upon receipt of a statement and any supporting documentation from the permittee, the Division shall review the statement and, within 10 days, shall notify the permittee in writing with the Division's determination whether the permittee demonstrated compliance with all requirements for retention of the permit. In making this determination, the Division may consider changes the permittee made enabling the permittee to conduct the operations for which the permit is held in accordance with all applicable laws and rules, and processing errors made by the Division.

History Note: Authority G.S. 113-134; 113-171; 113-182; 113-221.2; 143B-289.52; 150B-3; 150B-23;
Eff. January 1, 1991;
Amended Eff. May 1, 2017; August 1, 1999;
Readopted Eff. June 1, 2022.

15A NCAC 03P .0102 CONTESTED CASE HEARING PROCEDURES

Contested case hearings shall be held in accordance with Article 3 of Chapter 150B of the General Statutes.

History Note: Authority G.S. 113-131; 113-134; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 1999;
Readopted Eff. June 1, 2022.

15A NCAC 03P .0103 PETITIONS FOR REGULATORY ACTIVITY

History Note: Authority G.S. 113-134; 143B-289.4; 150B-20;
Eff. September 1, 1991;
Amended Eff. May 1, 1992;
Repealed Eff. April 1, 1999.

SECTION .0200 - DECLARATORY RULINGS

15A NCAC 03P .0201 DECLARATORY RULINGS: GENERALLY

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

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

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

(a) All requests for a declaratory ruling shall be submitted in writing to the Marine Fisheries Commission Chair and addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(b) All requests shall include the following:

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

(c) A request for a ruling on the validity of a Commission rule shall state the petitioner's reasons for questioning the validity of the rule and a brief or legal memorandum supporting the petitioner's position. A request for a ruling on the applicability of a rule, order, or statute shall include a statement of the specific facts to a given factual situation and documentation supporting those facts. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the conflict or inconsistency, the interpretation provided by the agency, and the law or rule in question. A person may ask for multiple types of declaratory rulings in a single request.

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

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

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.

SECTION .0300 - PETITIONS FOR RULEMAKING

15A NCAC 03P .0301 FORM AND CONTENTS OF PETITIONS FOR RULEMAKING

- (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission shall submit the person's request in a written petition to the Marine Fisheries Commission Chair addressed to the Marine Fisheries Commission Office, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.
- (b) The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:
- (1) the text of the proposed rules for adoption or amendment;
 - (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of existing rules;
 - (3) a statement of the effect of the requested rule changes on:
 - (A) existing rules;
 - (B) existing practices in the area involved; and
 - (C) those most likely to be affected by the requested rule changes; and
 - (4) the name and address of the petitioner.
- (c) The petitioner may include the following information within the request:
- (1) the statutory authority for the agency to promulgate the rules;
 - (2) a statement of the cost factors for persons affected by the proposed rules;
 - (3) a statement explaining the computation of the cost factors;
 - (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rules; and
 - (5) documents and data supporting the proposed rules.
- (d) In its review of the proposed rules, the Commission shall consider:

- (1) whether it has the authority to adopt the rules;
 - (2) the effect of the proposed rules on existing rules, programs, and practices;
 - (3) probable costs and cost factors of the proposed rules; and
 - (4) the impact of the rules on the public and regulated entities.
- (e) A petition failing to contain the required information shall be returned by the Marine Fisheries Commission Chair.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.51; 143B-289.52; 150B-20; Eff. April 1, 1999; Readopted Eff. June 1, 2022.

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

- (a) The Marine Fisheries Commission Chair may refer complete petitions, as set forth in Rule .0301 of this Section, to the appropriate standing advisory committees or other advisory committees of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.
- (b) Within 10 days of the assignment of the complete petition, the Chair of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition.
- (c) At least 15 days before the Committee meeting, the Committee Chair shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.
- (d) If the petition is referred to a Committee, the petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Fisheries Director, Division of Marine Fisheries staff, or their legal counsel may make a presentation to the Committee.
- (e) The Committee Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Committee Chair may determine whether additional interested persons shall make oral presentations before the Committee.
- (f) At least 10 days before the Committee meeting, interested persons shall request the opportunity to make a presentation to the Committees through the Chairs of the Committees. The request shall:
- (1) state the interest of the person;
 - (2) state the person's position on the petition for rulemaking; and
 - (3) be accompanied by supporting materials.
- (g) During the Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

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

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

- (a) A complete petition for rulemaking, as set forth in Rule .0301 of this Section, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.
- (b) If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0302 of this Section, the petition and the Committee's recommended action shall be presented through the Chair of the Committee or other designated member of the Committee during the business session of the Commission. Unless the Commission Chair rules otherwise, discussion on the petition shall be limited to the members of the Commission, legal counsel to the Commission, the Fisheries Director, Division of Marine Fisheries staff, legal counsel to the Department of Environmental Quality, the petitioner, and the petitioner's legal counsel.
- (c) For a petition not referred to a Committee, the Commission Chair shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Commission Chair may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Commission Chair. The request shall:

- (1) state the interest of the person;
 - (2) state the person's position on the petition for rulemaking; and
 - (3) be accompanied by supporting materials.
- (d) Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission shall:
- (1) grant the petition in writing, notify the petitioner in writing, and initiate rulemaking proceedings in accordance with G.S. 150B-20; or
 - (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person or persons who submitted the petition.

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

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

History Note: Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20;
Eff. April 1, 1999;
Repealed Eff. June 1, 2022.