



☒ NORTH CAROLINA WILDLIFE RESOURCES COMMISSION ☒

Monty Crump, Chairman

December 9, 2021

Rules Review Commission,

Please accept this letter as an objection by the North Carolina Wildlife Resources Commission (WRC) of approval of the request for readoption by the North Carolina Marine Fisheries Commission (MFC) of 15A NCAC 03Q .0100, et seq. (joint rules). The reasons for the objection are provided herein.

RELEVANT PROCEDURAL BACKGROUND

In 2018, WRC and DMF staff discussed the need to jointly readopt the joint rules as part of the periodic review. The MFC and the WRC categorized the joint rules as necessary with substantive public interest and agreed on a timeline for readoption. However, on August 20, 2020, the MFC voted to notice joint rule text for readoption without consulting the WRC. On October 1, 2020, the MFC's joint rules were noticed in the register with no changes. The WRC was not aware that the MFC had noticed text until a WRC employee read about the comment period in a press release. On November 20, 2020, the WRC submitted comments on the MFC's joint rules during the open public comment period.

On August 16, 2021, WRC staff became aware, via press release, that at the MFC's August 26, 2021 meeting, DMF staff would be proposing substantive changes to the previously noticed joint rules for final adoption without re-noticing the rules. Additionally, these changes were not discussed with the WRC. The WRC Chair communicated to the MFC Chair on August 18, 2021 that the WRC did not agree with the substantive changes made to the joint rules. Because of this, the MFC postponed their vote on the joint rules. On September 2, 2021, DMF staff, the MFC Chair, WRC staff, and the WRC Chair met to discuss the joint rules. On September 8, 2021, DMF staff met with WRC staff to discuss potential changes. On September 9, 2021, the MFC met and approved readoption of the joint rules with substantive changes over the objection of the WRC. The MFC joint rules have not yet been sent to the WRC for concurrence.

LACK OF AUTHORITY

The MFC lacks authority to adopt the joint rules without the approval of the WRC. As provided in Amber May's Staff Opinion, the joint rules noticed and filed by the MFC were previously jointly adopted by the MFC and the WRC. Rule 15A NCAC 03Q .0101 itself states that these rules "shall be adopted jointly" by the MFC and the WRC. However, the MFC did not adopt these rules jointly with the WRC. The WRC is not in concurrence with changes to the joint rules as submitted by the MFC. Furthermore, according to the letter sent to the Rules Review Commission (RRC) on November 22, 2021 from the MFC Chairman, W. Robert Bizzell, the MFC concedes that they have not jointly adopted the joint rules with the WRC and that the RRC cannot approve the joint rules as submitted.

The RRC should reject the joint rules submitted by the MFC because they do not have the authority to adopt these rules without the approval of the WRC.

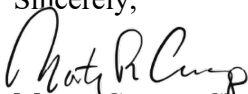
PROCEDURAL VIOLATIONS

The MFC did not adopt the joint rules in accordance with Part 2 of Article 2A of the Administrative Procedures Act (APA). The MFC violated the APA when it adopted several of the joint rules. The APA states "[a]n agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule. . ." N.C. Gen. Stat. § 150B-21.2(g).

On October 1, 2020, the MFC noticed the joint rules in the register with no changes to the rule text. A public hearing was held and the agency accepted comments on the joint rules with no proposed changes. However, on September 9, 2021, the MFC approved readoption of joint rules that differ substantially (affect interests of persons who could not reasonably have determined that the rule would affect their interests and produce an effect that could not reasonably have been expected based on the proposed text of the rule) from the rules published in the North Carolina Register. The MFC did not re-notice the rules or receive public comment after making changes that differed substantially from the noticed rules that had no proposed changes. Therefore, the MFC did not comply with N.C.G.S. § 150B-21.1 when it adopted the joint rules which differed substantially from the noticed rules.

For the reasons herein, the WRC requests that the RRC object to the joint rules submitted by the MFC for approval.

Sincerely,



Monty Crump, Chairman

N.C. Wildlife Resources Commission