

March 13, 2015

Amber Cronk May
Staff Attorney
Rules Review Commission

Ms. May,

The Wildlife Resources Commission is withdrawing 15A NCAC 10F .0333 from consideration for approval of temporary adoption by the Rules Review Commission on March 19.

Regards,

A handwritten signature in cursive script that reads "Jim Cogdell". The signature is written in black ink and is positioned to the left of the typed name below it.

Jim Cogdell, Chairman
N.C. Wildlife Resources Commission

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10F .0333

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
- Failure to comply with the APA
- Extend the period of review

COMMENT:

It is staff's recommendation that the Commission object to the temporary Rule filed by the Wildlife Resources Commission for failure to comply with the APA. Specifically, the Wildlife Resources Commission has failed to comply with the timeline set forth in G.S. 150B-21.1(a3). G.S. 150B -21.1(a3) is as follows:

Unless otherwise provided by law, the agency shall:

- (1) At least **30 business days** prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.
- (2) At least **30 business days** prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
- (3) Accept written comments on the proposed temporary rule for at least **15 business days** prior to adoption of the temporary rule.
- (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

The Wildlife Resources Commission has complied with (a3)(4); however, they have failed to comply with (a3)(1) through (3) as indicated below:

Requirement of G.S. 150B-21.1(a3)	Date	Adoption Date	Total Days per Date and Time Calculator
Submit Rule and Notice to Codifier 30 business days prior to adoption	1/30/2015*	3/5/15	23 Business Days (7 business days short)
Notify Interested Parties on Mailing List 30 business days prior to adoption	1/29/2015	3/5/15	24 Business Days (6 business days short)
Accept Written Comments for 15 business days	2/9/15-3/2/15	3/5/15	14 Business Days (1 business day short)

*staff notes that the required hardcopies of the Rule and Notice were not received by OAH until 2/2/15

Summary:

The Wildlife Resources Commission has failed to comply with the timeline set forth in G.S. 150B-21.1(a3) as noted above.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

ORIGINAL 3/6/2015

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10F .0333 Mecklenburg and Gaston Counties

3. Action: Adoption Amendment Repeal

4. Was this an Emergency Rule: Yes No Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: January 30, 2015

b. Proposed Temporary Rule published on the OAH website: February 5, 2015

c. Public Hearing date: February 19, 2015

d. Comment Period: February 9, 2015 to March 2, 2015

e. Notice pursuant to G.S. 150B-21.1(a3)(2): January 29, 2015

f. Adoption by agency on: March 5, 2015

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: April 1, 2015

h. Rule approved by RRC as a permanent rule: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

A serious and unforeseen threat to the public health, safety or welfare.

The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:

A recent change in federal or state budgetary policy.
Effective date of change:

A recent federal regulation.
Cite:
Effective date:

A recent court order.
Cite order:

State Medical Facilities Plan.

Other: The need for the WRC to establish a No Wake Zone pursuant to NCGS 150B-21.1(a)(7)

Explain: The proposed changes to 15A NCAC 10F .0333 would allow the Commission to create No Wake Zones to address safety concerns and water hazards, per authority for temporary rule-making established under NCGA 150B-21.1 (a)(7).

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OFFICE OF
ADMIN HEARINGS

1 15A NCAC 10F .0333 Mecklenburg and Gaston counties is adopted under temporary procedures as follows:
2

3 **15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES**

4 (a) Regulated Areas. This Rule applies to the following waters of Lake Wylie in Mecklenburg and Gaston
5 Counties:

- 6 (1) McDowell Park – The waters of the coves adjoining McDowell Park and the Southwest Nature
7 Preserve in Mecklenburg County, including the entrances to the coves on either side of
8 Copperhead Island;
- 9 (2) Gaston County Wildlife Club Cove – The waters of the cove at the Gaston County Wildlife Club
10 on South Point Peninsula in Gaston County;
- 11 (3) Buster Boyd Bridge- The areas 250 feet to the north and 150 feet to the south of the Buster Boyd
12 Bridge;
- 13 (4) Highway 27 Bridge – The area beginning 50 yards north of the NC 27 Bridge and extending 50
14 yards south of the southernmost of two railroad trestles immediately downstream from the NC 27
15 Bridge;
- 16 (5) Brown's Cove – The area beginning at the most narrow point of the entrance to Brown's Cove and
17 extending 250 feet in both directions;
- 18 (6) Paradise Point Cove – The waters of the Paradise Point Cove between Paradise Circle and
19 Lakeshore Drive as delineated by appropriate markers;
- 20 (7) Withers Cove - The area 50 feet on either side of Withers Bridge;~~and~~
- 21 (8) Sadler Island west- beginning at a line formed from a point on the western shore of Lake Wylie at
22 35.27481N, 81.0138W to a point on the eastern shore at 35.27423N, 81.01111W extending south
23 on the Lake to a line formed from a point on the western shore of Lake Wylie at 35.2708N,
24 81.01525W to a point on the western side of Sadler Island at 35.27056N, 81.01393W.
- 25 (9) Sadler Island east- beginning at a line formed from a point on the western shore of Lake Wylie at
26 35.27481N, 81.0138W to a point on the eastern shore at 35.27423N, 81.01111W extending south
27 on the Lake to a line formed from a point on the eastern side of Sadler Island at 35.2663N,
28 81.0143W to a point on the eastern shore of Lake Wylie at 35.26501N, 81.01374W.
- 29 ~~(8)~~(10) other bridges – the areas that are within 50 feet of any bridge in North Carolina that crosses the
30 waters of Lake Wylie that is not otherwise specifically mentioned in this Paragraph.

31 (b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of
32 any public boat-launching ramp, dock, pier, marina, boat storage structure or boat service area.

33 (c) Speed Limit Near All Other Bridges. No person shall operate a vessel at greater than no-wake speed within 50
34 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically
35 mentioned in Paragraph (a) of this Rule.

36 (d) Speed Limit in Marked Swimming or Mooring Areas. No person shall operate a vessel at greater than no-wake
37 speed within 50 yards of any marked mooring area or marked swimming area.

1 (e) Placement and Maintenance of Markers. The Lake Wylie Marine Commission is designated a suitable agency
2 for placement and maintenance of markers implementing this Rule.

3

4 *History Note: Authority G.S. 75A-3; 75A-15;*

5 *Eff. July 1, 1980;*

6 *Amended Eff. July 1, 1994; June 1, 1985; June 1, 1984; March 1, 1983;*

7 *Temporary Amendment Eff. January 1, 1998;*

8 *Amended Eff. July 1, 1998;*

9 *Temporary Amendment Eff. February 4, 2000;*

10 *Amended Eff. April 1, 2009; June 1, 2004; July 1, 2000.*

11 *Temporary Amendment Eff. April 1, 2015*