

Burgos, Alexander N

From: Everett, Jennifer
Sent: Tuesday, February 27, 2024 3:30 PM
To: Burgos, Alexander N
Cc: Ascher, Seth M; Wiggs, Travis C
Subject: FW: MFC Waiver Request
Attachments: MFC 210-day waiver request_2024-02-23.pdf

Alex, forgot to cc you on this.
Thanks!

Jennifer Everett
DEQ Rulemaking Coordinator
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From: Everett, Jennifer
Sent: Tuesday, February 27, 2024 3:11 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; jeannette.k.doran@gmail.com; RYAN, CHRISTINE M; Maier, Shawn <shawn.maier@deq.nc.gov>; Blum, Catherine <catherine.blum@deq.nc.gov>; Bisette, Jesse <jesse.bisette@deq.nc.gov>; Rawls, Kathy <kathy.rawls@deq.nc.gov>
Subject: RE: MFC Waiver Request

Dear Mr. Wiggs,

Thank you for your inquiry. While there is no deadline in S.L. 2023-137 for the adoption of rules, a regulatory framework has to be in place by December 1, 2024, because the requirement to report fish harvest is effective December 1, 2024 and the session law is silent as to the means and timing of the reporting. The additional effective dates in subsections (b) and (c) only relate to the penalty for failure to report, which goes from a verbal warning in 2024 to an infraction in 2026.

Permanent rules could not be adopted in time for December 1, 2024, if for no other reason than a fiscal note reflecting the substantial economic impact, including costs to the agency to develop and support a reporting application and the impact to the State's million-plus anglers (G.S. 150B-21.4(b1)), will take considerable time to prepare and requires a thorough understanding of how this regulatory program will be implemented.

Since permanent rulemaking cannot be completed by December 1, 2024, the agency is initially developing temporary rules. Although it would be possible to complete the temporary rulemaking process within the 210 days, this is an extremely compressed timeframe to implement a program of this magnitude. The letter from Chairman Bizzell (attached) provides the rationale for requesting a waiver from the 210-day requirement for temporary rulemaking per

G.S. 150B-21.1(a2). In the absence of a waiver, the Marine Fisheries Commission (MFC) would need to hold two special meetings, one in March and one in April. This would provide very little time to educate stakeholders about this significant regulatory program.

The MFC will submit a written statement of the need for temporary rules as required by G.S. 150B-21.1(a4) when it submits the temporary rules for approval of the RRC. In short, temporary rules are necessary because the adherence to the notice and hearing requirements of G.S. 150B-21.2 could not be completed in any meaningful way prior to the date that reporting harvest becomes mandatory. This was anticipated by the General Assembly, which directed the MFC and the Wildlife Resources Commission to implement this program through temporary and then permanent rules: "SECTION 6.(d) The Marine Fisheries Commission and the Wildlife Resources Commission shall adopt temporary rules to implement this section and shall adopt permanent rules to replace the temporary rules." S.L. 2023-137 (emphasis added).

Thank you in advance for your consideration.

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From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Monday, February 26, 2024 5:09 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: MFC Waiver Request

Ms. Everett,

Good afternoon. I'm writing about the Marine Fisheries Commission (MFC) letter sent to Rules Review Commission (RRC) Chair Doran on February 23, 2024. The MFC letter requests a waiver of the 210-day requirement set forth in G.S. 150B-21.1(a2) for any temporary rules proposed pursuant to Session Law 2023-137, Section 6. The letter says "the MFC is required to submit temporary rules to implement the mandate" laid out in Session Law 2023-137, Section 6.

Session Law 2023-137, Section 6 (f) says subsection (a) becomes effective December 1, 2024, and applies to violations committed on or after that date. Further, subsection (b) becomes effective December 1, 2025, and (c) is effective December 1, 2026. The Session Law does not provide any time restrictions on when rules shall be adopted.

Why is a waiver of the 210-day requirement necessary under these circumstances? There is sufficient time to adopt permanent rules prior to the effective dates of the Session Law.

Under 150B-21.1(a), “an agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of 150B-21.2 would be contrary to the public interest and that immediate adoption of the rule is required.” How does the MFC meet the requirements of 150B-21.1(a) in this situation?

Please reply at your earliest convenience. Thank you.

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