



NORTH CAROLINA MARINE FISHERIES COMMISSION DEPARTMENT OF ENVIRONMENTAL QUALITY

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February 23, 2024

Jeanette Doran (Chair)
N.C. Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609
Jeanette.k.doran@gmail.com

Dear Chair Doran,

The Marine Fisheries Commission (“MFC”) was tasked by Session Law 2023-137, Section 6, with the development of a program for reporting recreational harvest of five marine species and reporting of all commercial harvest of marine species that are not sold. General Statute 150B-21.1(a2) requires a temporary rule based upon a legislative change to be submitted to the Rules Review Commission (“RRC”) within 210 days of the enactment of the legislation. Session Law 2023-137, Section 6, became law on October 10, 2023, thus the MFC is required to submit temporary rules to implement the mandate to the RRC no later than May 7, 2024. The RRC has the authority to waive the 210-day requirement “upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.” G.S. 150B-21.1(a2). The MFC respectfully requests a waiver of the 210-day requirement set forth in N.C. Gen. Stat. 150B-21.1(a2) with respect to temporary rules under development pursuant to Session Law 2023-137, Section 6, which became law on October 10, 2023.

I. Degree of Public Benefit

The scope of the legislative mandate is exceptionally broad. The MFC was tasked with the unprecedented job of developing a program for reporting all harvest of five fish species by the State’s over one million recreational anglers. In 2022, recreational anglers harvested an estimated 2.4 million fish that would have to be reported under this new requirement. The session law also requires all commercial fishers to report all fish that are harvested but not sold. Currently, only fish that are sold must be reported. Fish kept for personal consumption or donated to charity will also have to be reported under this requirement.

While the MFC has been working diligently to develop rule language to implement this mandate, the temporary rules and the regulated public would benefit greatly from public involvement in the development and refinement of the temporary rules to achieve these tasks and conduct sufficient outreach to engage stakeholders on this issue. The MFC has made it a priority to raise stakeholder awareness about this new requirement in the hopes of eliciting more informed input during the public comment period. A waiver of the 210-day requirement would allow for additional public outreach so that stakeholders are better able to take advantage of the 20-day

public comment period. Absent a waiver, the MFC will have to proceed with publishing the Notice of Text in less than a month.

II. Whether the agency had control over the circumstances that required the requested waiver

The MFC faces a unique challenge in implementing this legislative mandate. While it has been working diligently on developing the necessary temporary rules since the session law became effective, this was not an initiative that was advocated for by the MFC or the Division of Marine Fisheries (“DMF”) and was thus starting from scratch when the law was passed. Moreover, no other state in the country requires the type of reporting contemplated by this mandate so there is no blueprint for such a requirement.

III. Notice to and opposition by the public

The MFC recently became aware of the 210-day requirement, as the focus for this initiative had been on the first legislative implementation date of December 1, 2024. The MFC discussed the need for a waiver of the 210-day requirement at its February 22, 2024, quarterly business meeting. The MFC is not aware of any public opposition to the waiver request and has no reason to believe there is reason to oppose it. A waiver of the 210-day requirement would not alter the timeline for implementation of the rules. The legislative changes do not become effective until December 1, 2024, so the pending temporary rules would not go into effect until that time.

IV. Need for the waiver

Based upon the complexity of creating a novel reporting structure and the size of the regulated community impacted by the requirement, significant public input is vital to developing rules that minimize the burden to stakeholders while fulfilling the statutory mandate and providing DMF with a tool to receive reliable data upon which management recommendations can be made. The MFC and DMF are prepared to move forward with development of the temporary rules to be able to submit those rules to the RRC by May 7, 2024; however, waiver of the 210-day requirement would provide additional opportunity for stakeholder engagement and further refinement of the rule language. This is especially important because, pursuant to the session law, the temporary rules will remain in effect until the permanent rules become effective.

V. Previous waiver requests submitted by the agency

The MFC is not aware of any previous waiver requests.

As detailed above, the MFC believes that a waiver of the 210-day requirement is necessary and justified under the criteria of G.S. 150B-21.1(a2). A waiver would not delay implementation of the temporary rules and would provide the MFC with time to conduct additional outreach and engagement to elicit more informed public comment and better refine these highly impactful rules.

Sincerely,



W. Robert Bizzell, Chairman
N.C Marine Fisheries Commission

WRB:cb:jb

Cc: Bill Lane, DEQ Kathy Rawls, DMF
Jesse Bisette, DMF Monty Crump, WRC



☒ NORTH CAROLINA WILDLIFE RESOURCES COMMISSION ☒

Cameron Ingram, Executive Director

February 27, 2024

Ms. Jeanette Doran, Chair
NC Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609
Jeanette.k.doran@gmail.com
VIA ELECTRONIC MAIL

Re: Request for Waiver of 210-day Requirement under 150B-21.1(a2)

Dear Madam Chair:

The Wildlife Resources Commission (WRC) is requesting that the Rules Review Commission, pursuant to its authority under General Statute 150B-21.1(a2), waive the 210-day requirement for temporary rulemaking after the enactment of legislation, for the adoption of temporary rules required by Session Law 2023-137, which became law on October 10, 2023. Based upon the complexity of creating a new reporting system, the magnitude of the potential impact to the regulated community, and the dependency that the WRC has on the Division of Marine Fisheries (DMF) to fulfill the mandate, the WRC believes that a waiver is necessary and warranted.

Session Law 2023-137 requires individuals to report all commercial harvest in coastal or joint waters and recreational harvest of five finfish species from coastal fishing waters, joint fishing waters, and inland fishing waters adjacent to coastal or joint waters to the DMF. Thus, the DMF is leading the development of a reporting system and requirements to collect the reports. Pending the development of a reporting system for recreational anglers, the WRC will adopt rules consistent with the recreational harvest reporting requirements in joint fishing waters and in the affected inland fishing waters. To the WRC's knowledge, the reporting system and requirements have yet to be developed to a point where temporary rules can be drafted.

Per the Marine Fisheries Commission's (MFC) February 23, 2024, waiver request to the Rules Review Commission, stakeholder and public engagement will be solicited to develop and refine the temporary

rules and to ensure informed input during the public comment period. The WRC agrees with that course of action and will cooperate with the MFC's efforts to conduct outreach and garner input on the development and implementation of reporting requirements, as we believe these requirements will be confusing to our constituents.

The WRC does not anticipate opposition to this waiver. The waiver, if granted, will not impact implementation, which is required by December 1, 2024. Based on the need for public outreach and input, the lack of necessary reporting requirements, and insufficient information necessary to develop temporary rules, the WRC believes that the waiver of the 210-day requirement is necessary and justified.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty R. Crump". The signature is fluid and cursive, with the first name "Monty" being more prominent.

Monty R. Crump, Chairman
Wildlife Resources Commission

Cc: W. Robert Bizzel, MFC
Cameron Ingram, WRC
Carrie Ruhlman, WRC
NC Office of Administrative Hearings