

## Burgos, Alexander N

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**Subject:** FW: RFC October 2023 Wildlife Resources Commission Rules  
**Attachments:** 15A NCAC 10A .0401.docx; 15A NCAC 10A .0402.docx; 15A NCAC 10A .1201.docx

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**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Tuesday, October 10, 2023 2:07 PM  
**To:** Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Bonner, Melva G <[melva.bonner@ncwildlife.org](mailto:melva.bonner@ncwildlife.org)>  
**Subject:** FW: RFC October 2023 Wildlife Resources Commission Rules

Updated rules for October's meeting.

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**From:** Bonner, Melva G <[melva.bonner@ncwildlife.org](mailto:melva.bonner@ncwildlife.org)>  
**Sent:** Tuesday, October 10, 2023 11:09 AM  
**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Cc:** Ruhlman, Carrie A <[carrie.ruhlman@ncwildlife.org](mailto:carrie.ruhlman@ncwildlife.org)>  
**Subject:** RE: RFC October 2023 Wildlife Resources Commission Rules

Hi Seth,

Attached are responses and revised rules. Please let me know if you have any questions or concerns.

Thank you,  
Melva

**Melva Bonner**  
Regulatory Analyst

**N.C. Wildlife Resources Commission**  
*Office of Conservation Policy & Analysis*  
1751 Varsity Drive  
Raleigh, North Carolina 27606  
Office: 919-707-0014  
[ncwildlife.org](http://ncwildlife.org)

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Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

1 15A NCAC 10A .0401 is readopted with changes as published in 37:22 NCR 2128 as follows:

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3 **15A NCAC 10A .0401 FORM AND CONTENTS OF PETITION**

4 (a) A written petition requesting rulemaking shall be sent to the Executive Director of the Wildlife Resources  
5 Commission at 1701 Mail Service Center, Raleigh, NC 27699-1700 for U.S. Postal Service delivery or 1751 Varsity  
6 Drive, Raleigh, NC 27606-2576 for other delivery services or in person and must contain:

- 7 (1) the name and address of the petitioner;
- 8 (2) the name and address of the person, group, or organization, if any, on behalf of which the petition  
9 is made, together with the representative capacity of the petitioner;
- 10 (3) the citation to any the rule sought to be ~~adopted, amended,~~ amended or repealed;
- 11 (4) suggested language for any the rule sought to be adopted or amended and a statement of its desired  
12 effect; and
- 13 (5) the signature of the petitioner.

14 (b) In addition to the ~~foregoing,~~ information required by Paragraph (a), the petition may contain expression of any  
15 reasons in support or arguments in favor of the regulatory action ~~proposed. Any proposed, and~~ tables, charts, maps,  
16 publications, photographs, or other supporting materials that the petitioner deems pertinent to the proposal ~~may be~~  
17 ~~included~~ by way of exhibits or attachments.

18

19 *History Note: Authority G.S. 150B-20;*  
20 *Eff. February 1, 1976;*  
21 *Amended Eff. November 1, 2023; July 1, 2018; July 1, 1993; April 15, 1979.*

22

1 15A NCAC 10A .0402 is readopted with changes as published in 37:22 NCR 2128 as follows:

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3 **15A NCAC 10A .0402 ACTION ON PETITION**

4 (a) Upon receipt, The ~~the~~ Executive Director Director, or his or her designee, shall ~~cause the petition requesting~~  
5 rulemaking to be marked or stamped stamp the petition with the date of its receipt ~~by him~~, which ~~date~~ shall constitute  
6 the date of its submission. ~~The Executive Director shall then refer the petition requesting rulemaking shall then be~~  
7 referred to the ~~Wildlife Resources~~ Commission for its consideration.

8 (b) Within three business days of receipt, the proposed text and statement of effect of the petition shall be forwarded  
9 to the Office of Administrative Hearings as required by G.S. 150B-20.

10 (c) Within 120 days following submission of the petition requesting rulemaking, the ~~Wildlife Resources~~ Commission  
11 shall:

12 (1) deny the petition in writing, stating the reason or reasons for such denial; or

13 (2) initiate rulemaking proceedings in accordance with G.S. 150B-20.

14 ~~(e)(d)~~ The ~~Wildlife Resources~~ Commission shall notify the person who submitted the petition of the action taken.  
15 taken by the Commission. Any denial Denial of a petition requesting rulemaking shall be sent to the petitioner at the  
16 address therein indicated by registered mail, "return receipt requested."

17  
18 *History Note: Authority G.S. 150B-20;*

19 *Eff. February 1, 1976;*

20 *Amended Eff. November 1, 2023; July 1, 1993.*

1 15A NCAC 10A .1201 is readopted with changes as published in 37:22 NCR 2128 as follows:

2  
3 **15A NCAC 10A .1201 EMERGENCY POWERS**

4 (a) Upon a ~~finding~~ determination by the ~~Wildlife Resources Commission~~ Commission [~~determining~~] that a wildlife disease  
5 threatens irreparable injury to wildlife or to the public, the Executive Director shall develop an emergency response  
6 plan in consultation with the Commission, Governor's office and the State ~~Veterinarian~~. ~~The plan may prescribe~~  
7 Veterinarian prescribing one or more of the following actions:

- 8 (1) shorten or lengthen harvest seasons;
- 9 (2) prohibit transport of wildlife resources or parts thereof;
- 10 (3) prohibit possession of wildlife resources;
- 11 (4) confiscate wildlife resources;
- 12 (5) revoke licenses or permits;
- 13 (6) expand or restrict daily bag limits, daily creel limits, and possession limits;
- 14 (7) establish mandatory wildlife check stations;
- 15 (8) restrict public access to game lands;
- 16 (9) require prepayment of outside testing costs by persons who desire disease testing of their harvested  
17 wildlife resource when such testing is not essential to the objectives of the plan;
- 18 (10) prohibit supplemental feeding or baiting of wildlife;
- 19 (11) prohibit any other activities that aid in the transmission or movement of the disease as determined  
20 by the best available science regarding the disease threat;
- 21 (12) implement any other activities necessary to reduce infection opportunities; and
- 22 (13) implement any other requirements necessary to assist in the detection and isolation of the disease.

23 (b) The Commission shall inform the public of the implementation of emergency powers and actions in the response  
24 plan through press releases, postings on the Wildlife Commission ~~web site~~, website and social media, ~~letters~~ emails  
25 ~~sent~~ to representatives of sportsmen's groups or other constituents likely to be directly affected, and ~~by~~ employee  
26 outreach.

27  
28 *History Note: Authority G.S. 113-134; 113-306(f);*  
29 *Eff. March 1, 2011;*  
30 *Amended Eff. November 1, 2023.*

**Request for Changes Pursuant to  
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

**Note the following general instructions:**

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
  - Wrong: “~~a~~Association”
  - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
  - Wrong: “day;; and”
  - Right: “~~day;~~ day; and”
7. Formatting instructions and examples may be found at:  
<https://www.oah.nc.gov/rule-format-examples>

**If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.**

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10A .0401

**DEADLINE FOR RECEIPT: October 13, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On line 10, if someone were petitioning to adopt a new rule, how would they know what citation to give it?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher  
Commission Counsel  
Date submitted to agency: October 5, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Wildlife Resources Commission

RULE CITATION: 15 NCAC 10A .0402

**DEADLINE FOR RECEIPT: October 13, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On line 4, grammatically I think you still need an article before Executive Director. So, **the** ~~The Executive Director~~ Director.”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10A .1201

**DEADLINE FOR RECEIPT: October 13, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*G.S. 113-306(f) provides that the “Commission may adopt rules governing the exercise of emergency powers by the Executive Director when the Commission determines that such powers are necessary to respond to a wildlife disease that threatens irreparable injury to wildlife or the public.” It appears that a determination by the Commission is necessary before the Executive Director can exercise emergency powers under the statute. The edits to the rule appear to eliminate the Commission’s determination from this process. Is this intentional? And if so, how does this not contradict the statute?*

*If this was unintentional, it appears that undoing the changes to line 4 would solve the problem. Or consider on line 4 something like: “Upon a determination by the Commission that a wildlife disease...”*

*G.S. 113-306(f) requires that: “The rules shall provide that the Executive Director must consult with the Commission, the State Veterinarian, and the Governor prior to implementing the emergency powers.” On lines 5 and 6, the rule only provides that the Director consult with the Governor and the State Veterinarian. How does this meet the statutory requirements?*

*To address the prior comment, consider on line 6: “with the Commission, the Governor’s office and...”*

*In the history note on line 29, “March 1, 2011” is the effective date, and “November 1, 2023” should be the amended effective date. This should be formatted like you have in the other rules.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher  
Commission Counsel

Date submitted to agency: October 5, 2023



## **Burgos, Alexander N**

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**From:** Ascher, Seth M  
**Sent:** Thursday, October 5, 2023 4:25 PM  
**To:** Burgos, Alexander N  
**Subject:** FW: RFC October 2023 Wildlife Resources Commission Rules  
**Attachments:** Wildlife RFC October 2023.docx

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**From:** Ascher, Seth M  
**Sent:** Thursday, October 5, 2023 4:25 PM  
**To:** Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>  
**Cc:** Bonner, Melva G <melva.bonner@ncwildlife.org>  
**Subject:** RFC October 2023 Wildlife Resources Commission Rules

Good afternoon,

I'm the attorney who reviewed the Rule submitted by the Wildlife Resources Commission for the October 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, October 19, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on October 13, 2023.

Please let me know if you have any questions or concerns.

**Seth Ascher**  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1934

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