

**NORTH CAROLINA
INTERJURISDICTIONAL FISHERIES MANAGEMENT PLAN**

By

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The 2007 Interjurisdictional Fisheries Management Plan (FMP) was developed by the North Carolina Department of Environment and Natural Resources Division of Marine Fisheries (DMF) under the direction of the North Carolina Marine Fisheries Commission (MFC) with advice from the Finfish Advisory Committee, the Plan Development Team (PDT), and the Division Rules Advisory Team, all who contributed their time and knowledge to this document.

Finfish Advisory Committee

IJ FMP Plan Development Team

LIST OF ACRONYMS

AC – Advisory Committee

AG – Attorney General

ASMA – Albemarle Sound Management Area for striped bass

ASMFC – Atlantic States Marine Fisheries Commission

BMSY – Biomass Maximum Sustainable Yield

CAP – Compliance Advisory Panel

CFDBS – Commercial Fisheries Database

CIE – Center for Independent Experts

DAS – Days at Sea

CSMA – Central Southern Management Area for striped bass

DENR – North Carolina Department of Environment and Natural Resources

DMF – North Carolina Division of Marine Fisheries

EEZ – Exclusive Economic Zone

EFH – Essential Fish Habitat

F – Fishing Mortality

FMP – Fishery Management Plan

FMU – Fishery Management Unit

FRA – Fishery Reform Act

GS – General Statute

HMS – Highly Migratory Species

ISFMP – ASMFC Interstate Fisheries Management Program

LCS – Large Coastal Sharks

M – Natural Mortality

MAFMC – Mid-Atlantic Fishery Management Council

MFC – North Carolina Marine Fisheries Commission

MSY – Maximum Sustainable Yield

NEFSC – Northeast Fisheries Science Center

NMFS – National Marine Fisheries Service

NOAA – National Oceanic and Atmospheric Administration

NPDES - National Pollution Discharge Elimination System

OY – Optimum Yield

PDT – Plan Development Team

PRT – Plan Review Team

RAT – Rules Advisory Team

RRMA Roanoke River Management Area for striped bass

SAFMC – South Atlantic Fishery Management Council

SARC – Stock Assessment Review Committee

SAW – Stock Assessment Workshop

SCS – Small Coastal Sharks

SFMA – Southern Fishery Management Area for monkfish

SPR – Spawning Potential Ratio

SSB – Spawning Stock Biomass

TAL – Total Allowable Landings

TAC – Total Allowable Catch

TC – Technical Committee

USFWS – United States Fish and Wildlife Service

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I. PURPOSE

The Fisheries Reform Act of 1997 (FRA) and subsequent revisions through 2004 requires the Department of Environment and Natural Resources to prepare Fishery Management Plans (FMP) for adoption by the Marine Fisheries Commission (MFC) for all commercially and recreationally significant species or fisheries that comprise North Carolina's marine and estuarine resources. Many FMPs have been developed and implemented by federal regional Fishery Management Councils (Councils) or the compact of states under the Atlantic States Marine Fisheries Commission (ASMFC). The goal of these plans, established under the Magnuson-Stevens Fishery Conservation and Management Act (federal Councils FMPs) and the Atlantic Coastal Fisheries Cooperative Management Act (ASMFC FMPs), are similar to the goals of the FRA to "ensure long-term viability" of these fisheries. Notwithstanding the similar goal but differing legal basis, the Council and ASMFC FMPs when adopted by the MFC as a North Carolina FMP are held to the requirements of North Carolina G.S. 113-182.1:

- a) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.
- b) Recommend management actions pertaining to the fishery or fisheries.
- c) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.
- d) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and achieving a sustainable harvest. This subdivision shall only apply to a plan for a fishery that is overfished. This subdivision shall not apply to a plan for a fishery where the biology of the fish or environmental conditions make ending overfishing and achieving a sustainable harvest within 10 years impracticable.

The revised FRA adjusted several definitions in G. S. 113-129:

Sustainable Harvest (14a) is defined as the amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished.

Overfished (12c) is defined as the condition of a fishery that occurs when the spawning stock biomass of the fishery is below the level that is adequate for the recruitment class of a fishery to replace the spawning class of the fishery.

Overfishing (12d) is defined as fishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest.

For the purposes of this plan, sustainable harvest is synonymous with optimum yield (OY) or other recovery targets defined in ASMFC and federal Council FMPs.

The ultimate purpose of this FMP is twofold:

- 1) Selectively adopt management measures contained in approved Council or ASMFC FMPs by reference as minimum standard(s), and

- 2) Avoid duplication of effort in the development of plans under the FRA for species or species groups where equivalent Council or ASMFC FMPs have been developed and adopted with full participation from the state of North Carolina.

II. GOALS AND OBJECTIVES

The goal of the Interjurisdictional Fishery Management Plan is to adopt FMPs, consistent with North Carolina law, approved by the Councils or ASMFC by reference and implement corresponding fishery regulations in North Carolina to provide compliance or compatibility with approved FMPs and amendments, now and in the future. To achieve these goals, the following objectives shall be met:

1. Participate fully, consistent with North Carolina law, in all levels (Advisory Panels, Technical Committees, Monitoring Committees, Stock Assessment Committees, Plan Development and Review Teams, Management Boards, and Committees) of the Council and ASMFC process for developing FMPs and amendments through appropriately informed Division staff, MFC members, citizen advisors, and the public at large.
2. Selectively adopt management measures in North Carolina coastal waters to implement measures promulgated by the Secretary of Commerce or approved by the ASMFC necessary to implement federal FMPs, as well as to achieve the sustainable harvest for Council and ASMFC managed species.
3. Develop a program of education and public information to help identify the causes and nature of problems in the fish stocks managed by the Councils or ASMFC, their habitat and fisheries, and the rationale for management efforts to solve these problems.
4. Develop and implement a management and regulatory process to provide adequate resource protection, optimize yield from the fishery, and consider the needs of all user groups.
5. Promote harvesting practices, methodologies, and technologies that minimize bycatch.
6. Restore, improve and protect essential, critical fisheries habitat and environmental quality to increase growth, survival, and reproduction of fish stocks.
7. Identify, encourage, and conduct research to improve understanding of population ecology and dynamics.
8. Initiate, enhance, and conduct studies to collect the socioeconomic data needed to properly monitor and manage the fisheries.

III. MANAGEMENT AUTHORITY

The Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 confer the authority for management of coastal, interjurisdictional fisheries to the ASMFC and the regional fisheries management Councils (See Appendix A). The purpose of these acts is to provide for the preparation and implementation, in accordance with standards contained in the respective Acts,

of FMPs that will achieve and maintain, the availability of coastal fishery resources on a long-term basis (sustainable harvest).

North Carolina is an active, voting member on the ASMFC as well as the South and Mid-Atlantic Fishery Management Councils. North Carolina's participation in these organizations is critical to ensure that North Carolina's fishermen and fisheries resources are considered and adequately protected. To that end, North Carolina through its DMF staff, ASMFC or Council members, and citizen advisors participate fully in the development of these federal FMPs that have an impact on commercial and recreational fisheries in North Carolina.

Several North Carolina General Statutes deal with the adoption of federal regulations developed under authority of the ASMFC or adopted through the federal Councils by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act. North Carolina G.S. 150B-21.6 states "an agency may incorporate the following material by reference in a rule without repeating the text of the referenced material: (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association". North Carolina G.S. 113-228 states that the "MFC in its discretion may by reference in its rules adopt relevant provisions of federal laws and regulations as State rules". Additionally, this G.S. provides for the MFC to be "exempt from any conflicting limitations in North Carolina G.S. 150B-21.6 so that it may provide for automatic incorporation by reference into its rules of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Department".

North Carolina G.S. 143B-289.51 describes the creation and purpose and G.S. 143B-289.52 the powers and duties of the MFC. These statutes provide for the MFC to advise the State regarding ocean and marine fisheries within the jurisdiction of the ASMFC and federal Councils, to manage or regulate fishing in the Atlantic Ocean and to adopt relevant State rules. Consequently, the MFC and DMF have the authority to develop an FMP that adopts ASMFC and federal Council plans by reference. However, no provisions of any ASMFC or federal Council FMP may be adopted through this FMP unless it complies with applicable provisions of state law.

IV. FEDERAL MANAGEMENT ORGANIZATIONS

The ASMFC is a compact of the 15 coastal states along the U.S. Atlantic coast from Maine to Florida. The ASMFC mission is "to promote cooperative management of the fisheries, marine, shell and diadromous, of the Atlantic coast of the United States by the protection and enhancement of such fisheries, and by the avoidance of physical waste of the fisheries from any cause". The Commission's Interstate Fisheries Management Program (ISFMP) began in 1981. The goal of the program is to promote cooperative management through interstate fishery management plans. The ISFMP operates under the direction of the ISFMP Policy Board and the species management boards. The ISFMP Policy Board is composed of one representative from each member state, the District of Columbia, the Potomac River Fisheries Commission, National Marine Fisheries Service (NMFS), and United States Fish and Wildlife Service (USFWS). The Policy Board provides overall guidance and ensures consistency with the ISFMP Charter and between fishery management plans. The species management boards consider and approve the development and implementation of fishery management plans, including the integration of scientific information and proposed management measures. In this process, the species management boards primarily rely on input from two main sources – species technical committees and species advisory panels. North Carolina and the DMF have staff and citizens who serve as members of ASMFC Management Boards, Monitoring Committees, Technical

Committees, Advisory groups, etc. The Director of the DMF, along with legislative appointees are the key voting members on the ASMFC, with DMF staff and citizen advisors representing the scientific, environmental, commercial, and recreational interests of North Carolina.

The importance of a cooperative program to protect and enhance the fisheries under the jurisdiction of the ASMFC has long been recognized as the most critical component of the ASMFC mission. In 1993, Congress enacted the Atlantic Coastal Fisheries Cooperative Management Act (Appendix A). This Act charges all Atlantic states with implementing coastal fishery management plans adopted by the ASMFC to safeguard the future of Atlantic coastal fisheries in the best interest of both the fishermen and the nation. The powers of the ASMFC were expanded by the Act and the purposes of the ASMFC were also altered. The ASMFC became the agency charged by Congress with establishing and implementing fisheries management for migratory fish stocks along the Atlantic coast that had historically been state controlled. In so doing the ASMFC now exercises the sovereignty of the United States, rather than the collective power of the subscribing compact states. The Act also expanded their jurisdiction to include conservation of the “marine environment” in order to assure the availability of coastal fisheries resources on a long term basis. (Attorney General Advisory Opinion, 1996)

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act 2006 (Appendix A), maintains the establishment of Regional Fishery Management Councils (e.g., South Atlantic and Mid-Atlantic Councils) to “exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of Fishery Management Plans which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans and which take into account the social and economic needs of the States”. Jurisdiction of the councils is for all fish within the exclusive economic zone and fishery management authority beyond the exclusive economic zone over anadromous species and Continental Shelf fishery resources. In the 2006 reauthorization the Act calls for the FMPs to set catch levels to prevent overfishing, based on scientific advice, by 2010 for stocks subject to overfishing. The Act states “establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability”. Management measures must be prepared and implemented to end overfishing immediately within two years of notification.

The regional Councils are comprised of the State Division Director or his designee, Obligatory (MAFMC and SAFMC) and At-large (SAFMC) positions appointed by the U.S. Secretary of Commerce. Similar to the ASMFC, the Councils appoint citizen advisors from states that have an interest in the specific fishery, to serve on Advisory Panels to assist in the development of fishery management plans.

The clear intent of Congress in these two acts is to establish federal and state partnerships to ensure that the nation’s fisheries are adequately protected and managed for optimum yield. The public participation in these processes is likewise emphasized, and the mechanisms to ensure public involvement are built into the acts.

V. COUNCIL AND ASMFC PLAN DEVELOPMENT

The process for developing FMPs is similar at the ASMFC and Council levels and is likewise similar to the process set forth in North Carolina by the FRA. The development of an FMP or amendment begins with a scoping document and scoping hearings (scoping process). This is the stage when issues are identified by the ASMFC or regional Councils with input from the public. A public hearing document is produced between the citizen advisory panels and the Council or ASMFC. It contains management options aimed at recovering an overfished fishery or maintaining a healthy or a recovered fishery. After the scoping process, issues are discussed and included in the FMP or rejected from further consideration. Proposed actions are reviewed by technical scientific committees to determine which alternatives achieve the conservation goals of the FMP. A draft FMP or amendment is then developed by a species management board or Council committee and taken out for public hearings (FMP Development). Public hearings are held in the states that declare an interest. Depending on the level of interest in any particular state, from 1 to 3 public hearings may be held to receive public comment. At this point in the process, formal public comment is taken from individuals and organizations with an interest in the FMP. The ASMFC or regional Council reviews public comments and selects preferred alternatives. For FMPs developed by the Councils, comments are accepted again after the final rule is published by the Secretary of Commerce. For FMPs developed by the ASMFC, final species management board approval is followed by final approval by the full Commission and enacted with no further comments accepted.

Council approved FMPs must be subsequently reviewed by the National Marine Fisheries Service, published in the Federal Register for a public comment period and approved by the Secretary of Commerce. Management measures contained in FMPs approved by the full ASMFC go to the individual states for implementation.

VI. COORDINATION OF FMP DEVELOPMENT WITH NC MFC

Numerous individuals from the state are involved in the development of interjurisdictional FMPs, however, there is a need for specific roles to be identified for the DMF and the MFC to ensure that both are well informed on the issues surrounding the development and approval of these federal plans. The MFC has expressed its concern to the DMF, the ASMFC and NOAA Fisheries about a lack of involvement and understanding of FMP management issues as these issues are undergoing deliberation in the federal FMP development process. Since the MFC must ultimately adopt compliance rules for state waters, it was felt they should have a more active involvement in the process. A joint meeting with the MFC and ASMFC was held in October 2006 to discuss this topic. The main conclusion from the meeting was the need to improve the lines of communication between all involved management entities.

In order to facilitate improved information exchange the MFC will be informed of FMP scoping and development activities being undertaken by the ASMFC or federal Councils by the lead DMF biologist for the particular species. These DMF species leads will make available copies of their ASMFC or Council meeting summary memoranda, as well as the annual compliance or implementation plans, and any other document the species leads feel would be of interest. In addition the species leads will prepare for MFC review a Public Information Brochure (PIB) for distribution like the FMP PIB for solely state managed species. The PIB will summarize the need for action and the objectives of the specific plan amendment along with alternatives that may be considered. This product will allow the DMF to present the information to the MFC, MFC Standing and Regional Committees, as well as the public with the North Carolina perspective on any new amendments prior to the development of the draft FMP. The DMF MFC Liaison office staff will be responsible for circulating these documents to the MFC.

The MFC will refer ASMFC and Council scoping documents to the Finfish Committee, and any other MFC committee deemed appropriate for review and recommend any additional alternatives it feels are appropriate. The DMF will submit those comments to the appropriate management agency during the scoping process. DMF staff will provide the resultant draft FMP and dates for public hearings to the MFC for review and comment. Final actions will be reported to the MFC with proposed rules for implementation

VII. MANAGEMENT UNIT: FISH STOCKS MANAGED BY THE COUNCILS AND COMMISSION

Table 1 is a summary of the finfish species currently managed under FMPs developed by the regional Councils and the ASMFC that are listed on the Division of Marine Fisheries 2006 Stock Status Report or are of particular concern to North Carolina. This list constitutes the management unit for this FMP. Other species may be added to this list in the future from subsequent amendments as other fish stocks require Council or ASMFC action. The intent of this IJ FMP is to include any new species or amendments that are developed in the future. Appendix B and C provide detailed descriptions of the FMPs and North Carolina involvement in the development of those FMPs.

Table 1. Species or species groups managed under the jurisdiction of the ASMFC, South and/or Mid-Atlantic Councils.

Species or species group	Atlantic States Marine Fisheries Commission	South Atlantic Fishery Management Council	Mid-Atlantic Fishery Management Council	North Carolina Marine Fisheries Commission
American Eel	X			
Atlantic Croaker	X			
Atlantic Menhaden	X			
Atlantic Striped Bass	X			X
Atlantic Sturgeon	X			
Black Sea Bass – North	X		X	
Bluefish	X		X	
Red Drum	X			X
Scup	X		X	
Shad and River Herring	X			X

Table 1 continued

Species or species group	Atlantic States Marine Fisheries Commission	South Atlantic Fishery Management Council	Mid-Atlantic Fishery Management Council	North Carolina Marine Fisheries Commission
Sharks*	X			
Spanish Mackerel	X	X		
Spiny Dogfish	X		X	
Spot	X			
Spotted Seatrout	X			X
Summer Flounder	X		X	
Tautog	X			
Weakfish	X			
Dolphin/Wahoo		X		
King Mackerel		X		
Reef Fishes Complex		X		
Black Sea Bass - South		X		
Monkfish			X	

*ASMFC plan pending and NMFS HMS FMP in effect

Species or species groups in bold require federal permits for fishermen.

VIII. MANAGEMENT PLANS

Fishery Management Plans and their subsequent amendments have been prepared or are in the process of being prepared by the Councils or ASMFC for the species listed in Table 1. Several of these plans have over 15 regulatory amendments. The intent of this FMP is to adopt these plans as North Carolina FMPs by reference in order that regulations developed through these federal processes be implemented in the state waters of North Carolina. Because of the sheer volume of the plans and amendments, the DMF will maintain all available plans and amendments on file at the DMF headquarters in Morehead City, North Carolina. Anyone desiring copies of the original plans and amendments may obtain them by contacting the DMF office in Morehead City, the South or Mid-Atlantic Council (<http://www.nmfs.noaa.gov/councils.htm>), or the ASMFC (www.asmfc.org). State contacts for each federal FMP are listed in Appendix C.

IX. IMPLEMENTATION OF COUNCIL/COMMISSION PLANS

Federal law requires that the conservation management actions approved through an ASMFC or regional Council FMP be implemented by the State of North Carolina. Both Acts contain measures that may be taken by the federal government should actions be taken, or fail to be taken, that will substantially and adversely affect the carrying out of such fishery management plans (Appendix A). The MFC, through the adoption of the IJ FMP, selectively authorizes these actions as the minimum management standards in North Carolina for the management unit species or species group. During the interim between federal FMP approval and MFC rule action for compliance, the Fisheries Director may implement any approved management measure

by proclamation if specifically authorized by MFC rule to do so. The intent of this FMP is not to restrict the State of North Carolina or the Marine Fisheries Commission from implementing more restrictive measures deemed appropriate by the best available information and in the best interest of the fisheries resources of North Carolina. At the same time, should management actions be approved by the ASMFC or regional Councils that are deemed contrary to the best interest of the resources or fishermen of the state of North Carolina, the MFC may challenge those restrictions, realizing the implications of a finding that determines the actions or inactions of the State will substantially and adversely affect the carrying out of such FMPs.

The implications of withdrawing from the ASMFC have been reviewed by the North Carolina Attorney General's office and addressed in the 1995 legislative session with the creation of the Atlantic States Marine Fisheries Compact Withdrawal Committee that reported their findings in 1996. In both instances the rationale against withdrawal is based on the finding that a state is still subject to the ASMFC actions, regardless of its membership in the compact (See Appendix A for advisory memorandum from AG). The ASMFC does have an appeal process that a state may employ to have a decision made by a species Management Board reconsidered by the Policy Board (Appendix A). The ISFMP charter also allows an appeal to the ISFMP Board in regards to challenging out of compliance determinations by the ASMFC.

Any FMP actions developed by the ASMFC or federal Councils could be challenged by North Carolina if they fail to meet legislative requirements or are deemed not in the best interest of the resource or fishermen of the State. A majority vote of the MFC would be required to not comply with a regional Council or ASMFC FMP. A determination of non-compliance for North Carolina by the ASMFC would be forwarded to the Secretary of Commerce. If the Secretary concurred and also determined that the measures the state failed to implement and enforce are necessary for conservation, a moratorium on fishing in the fishery in question is imposed within the waters of the non-complying State. Enforcement of the moratorium is by federal agents and the United States Coast Guard. For the Council FMPs, the Secretary of Commerce may regulate the applicable fishery within the state boundaries (other than its internal waters) in the event that North Carolina takes an action or fails to take any action that will substantially and adversely affect the carrying out of a regional Council FMP.

The MFC Chairman may appoint a Compliance Advisory Panel (CAP) to review whether compliance for an issue(s) for an ASMFC or Council FMP should be challenged.

Many of the FMPs developed by Councils and ASMFC require a specific State plan for implementing the reduction in harvest of overfished fisheries. Many of the plans provide individual states with options to reduce harvest in overfished fisheries or expand harvest in recovered fisheries that is best suited to the needs of the various fisheries that occur in that state. For example, Amendment 3 to the ASMFC FMP for weakfish provided the states with options on how to reduce the commercial and recreational weakfish harvest. The recreational fishery has a choice of bag and size limits, while the commercial fishery may be regulated by size limits, mesh sizes, closed seasons, and closed areas. In the case where options exist, the Chairman of the MFC may appoint a CAP to recommend management actions necessary to meet the requirements of specific FMPs that permit management options to be developed at the state level. This allows development of a plan that best suits the recreational and commercial fishing interests of North Carolina. The recommendations developed by the CAP will go through the MFC's Finfish Committee, Regional Advisory Committees and full MFC for review and recommendations to DMF for presentation to the Councils/ASMFC. Once the compliance plan is approved by the Council/ASMFC, the MFC is required to adopt the rules necessary for

compliance with the ASMFC plan and should complement actions in the federal Council plan. Some FMPs, however, impose mandatory fishery management measures, including quotas, bag limits, size limits, trip limits, etc., for which there are no options or exceptions. These management measures would be required to be adopted by each state affected, including North Carolina, as the minimum standard for that fishery except as noted in the challenge process previously described.

This FMP proposes no new management actions or any actions more restrictive than those required for compliance with FMPs developed by the ASMFC or Councils. A variety of MFC rules and DMF proclamations are utilized to implement management actions in order for the State to be in compliance with the ASMFC and Council plans. A review of these rules was undertaken to determine if they provide the most efficient and consistent approach. Appendix D contains a more thorough discussion of this review and includes recommended rule changes to improve the compliance process.

APPENDIX A LEGAL REFERENCES

Appendix A-1

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT Public Law 94-265

As amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act 2006 (P.L. 109-479), *Italic indicates amended sections, Shaded text shown in detail.*

AN ACT

To provide for the conservation and management of the fisheries,
and for other purposes.

<http://www.nmfs.noaa.gov/msa2007/>,

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Appendix

SEC. 2. FINDINGS, PURPOSES, AND POLICY 16 U.S.C. 1801

(b) PURPOSES.--It is therefore declared to be the purposes of the Congress in this Act--
99-659, 101-627, 102-251

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas]*;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;
104-297

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

101-627

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

95-354, 96-561, 104-297

(6) to encourage the development by the United States fishing industry of fisheries which

are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

104-297

(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

SEC. 306. STATE JURISDICTION (16 U.S.C. 1856)

97-453, 98-623

(a) IN GENERAL.--

(1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are--

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

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(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the

inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.

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(b) EXCEPTION.--

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that--

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan; the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).

Appendix A-2

TITLE 16 - CONSERVATION

CHAPTER 71 - ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT

Sec. 5101. - Findings and purpose

(a) Findings

The Congress finds the following:

(1)

Coastal fishery resources that migrate, or are widely distributed, across the jurisdictional boundaries of two or more of the Atlantic States and of the Federal Government are of substantial commercial and recreational importance and economic benefit to the Atlantic coastal region and the Nation.

(2)

Increased fishing pressure, environmental pollution, and the loss and alteration of habitat have reduced severely certain Atlantic coastal fishery resources.

(3)

Because no single governmental entity has exclusive management authority for Atlantic coastal fishery resources, harvesting of such resources is frequently subject to disparate, inconsistent, and intermittent State and Federal regulation that has been detrimental to the conservation and sustainable use of such resources and to the interests of fishermen and the Nation as a whole.

(4)

The responsibility for managing Atlantic coastal fisheries rests with the States, which carry out a cooperative program of fishery oversight and management through the Atlantic States Marine Fisheries Commission. It is the responsibility of the Federal Government to support such cooperative interstate management of coastal fishery resources.

(5)

The failure by one or more Atlantic States to fully implement a coastal fishery management plan can affect the status of Atlantic coastal fisheries, and can discourage other States from fully implementing coastal fishery management plans.

(6)

It is in the national interest to provide for more effective Atlantic State fishery resource conservation and management.

(b) Purpose

The purpose of this chapter is to support and encourage the development, implementation, and enforcement of effective interstate conservation and management of Atlantic coastal fishery resources.

Sec. 5102. - Definitions

In this chapter, the following definitions apply:

(1)

The term "coastal fishery management plan" means a plan for managing a coastal fishery resource, or an amendment to such plan, prepared and adopted by the Commission, that -

(A)

contains information regarding the status of the resource and related fisheries; and

(B) specifies conservation and management actions to be taken by the States.

(2) The term "coastal fishery resource" means any fishery, any species of fish, or any stock of fish that moves among, or is broadly distributed across, waters under the jurisdiction of two or more States or waters under the jurisdiction of one or more States and the exclusive economic zone.

(3) The term "Commission" means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by the Congress in Public Laws 77-539 and 81-721.

(4) The term "conservation" means the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis.

(5) The term "Councils" means Regional Fishery Management Councils established under section 1852 of this title.

(6) The term "exclusive economic zone" means the exclusive economic zone of the United States established by Proclamation Number 5030, dated March 10, 1983. For the purposes of this chapter, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of that zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(7) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal life other than marine mammals and birds.

(8) The term "fishery" means -

(A) one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, commercial, recreational, or economic characteristics; or

(B) any fishing for such stocks.

(9) The term "fishing" means -

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity that can be reasonably expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in

subparagraphs (A) through (C). Such term does not include any scientific research activity or the catching, taking, or harvesting of fish in an aquaculture operation.

(10)

The term "implement and enforce" means to enact and implement laws or regulations as required to conform with the provisions of a coastal fishery management plan and to assure compliance with such laws or regulations by persons participating in a fishery that is subject to such plan.

(11)

The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(12)

The term "Secretary" means the Secretary of Commerce.

(13)

The term "State" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, or the Potomac River Fisheries Commission

Sec. 5103. - State-Federal cooperation in Atlantic coastal fishery management

(a) Federal support for State coastal fisheries programs

The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement; habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning.

(b) Federal regulation in exclusive economic zone

(1)

In the absence of an approved and implemented fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and after consultation with the appropriate Councils, the Secretary may implement regulations to govern fishing in the exclusive economic zone that are -

(A)

compatible with the effective implementation of a coastal fishery management plan; and

(B)

consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851). The regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the coastal fishery management plan. Regulations issued by the Secretary to implement an approved fishery management plan prepared by the appropriate Councils or the Secretary under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall supersede any conflicting regulations issued by the Secretary under this subsection.

(2)

The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply

with respect to regulations issued under this subsection as if such regulations were issued under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)

Sec. 5104. - State implementation of coastal fishery management plans

(a) Coastal fishery management plans

(1)

The Commission shall prepare and adopt coastal fishery management plans to provide for the conservation of coastal fishery resources. In preparing a coastal fishery management plan for a fishery that is located in both State waters and the exclusive economic zone, the Commission shall consult with appropriate Councils to determine areas where such coastal fishery management plan may complement Council fishery management plans. The coastal fishery management plan shall specify the requirements necessary for States to be in compliance with the plan. Upon adoption of a coastal fishery management plan, the Commission shall identify each State that is required to implement and enforce that plan.

(2)

Within 1 year after December 20, 1993, the Commission shall establish standards and procedures to govern the preparation of coastal fishery management plans under this chapter, including standards and procedures to ensure that -

(A)

such plans promote the conservation of fish stocks throughout their ranges and are based on the best scientific information available; and

(B)

the Commission provides adequate opportunity for public participation in the plan preparation process, including at least four public hearings and procedures for the submission of written comments to the Commission.

(b) State implementation and enforcement

(1)

Each State identified under subsection (a) of this section with respect to a coastal fishery management plan shall implement and enforce the measures of such plan within the timeframe established in the plan.

(2)

Within 90 days after December 20, 1993, the Commission shall establish a schedule of timeframes within which States shall implement and enforce the measures of coastal fishery management plans in existence before December 20, 1993. No such timeframe shall exceed 12 months after the date on which the schedule is adopted.

(c) Commission monitoring of State implementation and enforcement

The Commission shall, at least annually, review each State's implementation and enforcement of coastal fishery management plans for the purpose of determining whether such State is effectively implementing and enforcing each such plan. Upon completion of such reviews, the Commission shall report the results of the reviews to the Secretaries

Sec. 5105. - State noncompliance with coastal fishery management plans

(a) Noncompliance determination

The Commission shall determine that a State is not in compliance with the provisions of a coastal

fishery management plan if it finds that the State has not implemented and enforced such plan within the timeframes established under the plan or under section 5104 of this title.

(b) Notification

Upon making any determination under subsection (a) of this section, the Commission shall within 10 working days notify the Secretaries of such determination. Such notification shall include the reasons for making the determination and an explicit list of actions that the affected State must take to comply with the coastal fishery management plan. The Commission shall provide a copy of the notification to the affected State.

(c) Withdrawal of noncompliance determination

After making a determination under subsection (a) of this section, the Commission shall continue to monitor State implementation and enforcement. Upon finding that a State has complied with the actions required under subsection (b) of this section, the Commission shall immediately withdraw its determination of noncompliance. The Commission shall promptly notify the Secretaries of such withdrawal

Sec. 5106. - Secretarial action

(a) Secretarial review of Commission determination of noncompliance

Within 30 days after receiving a notification from the Commission under section 5105(b) of this title and after review of the Commission's determination of noncompliance, the Secretary shall make a finding on -

(1)

whether the State in question has failed to carry out its responsibility under section 5104 of this title; and

(2)

if so, whether the measures that the State has failed to implement and enforce are necessary for the conservation of the fishery in question.

(b) Consideration of comments

In making a finding under subsection (a) of this section, the Secretary shall -

(A)

give careful consideration to the comments of the State that the Commission has determined under section 5105(a) of this title is not in compliance with a coastal fishery management plan, and provide such State, upon request, with the opportunity to meet with and present its comments directly to the Secretary; and

(B)

solicit and consider the comments of the Commission and the appropriate Councils.

(c) Moratorium

(1)

Upon making a finding under subsection (a) of this section that a State has failed to carry out its responsibility under section 5104 of this title and that the measures it failed to implement and enforce are necessary for conservation, the Secretary shall declare a moratorium on fishing in the fishery in question within the waters of the noncomplying State. The Secretary shall specify the moratorium's effective date, which shall be any date within 6 months after declaration of the moratorium.

(2)

If after a moratorium is declared under paragraph (1) the Secretary is notified by the Commission that the Commission is withdrawing under section 5105(c) of this title the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If so, the moratorium shall be terminated.

(d) Implementing regulations

The Secretary may issue regulations necessary to implement this section. Such regulations -

- (1) may provide for the possession and use of fish which have been produced in an aquaculture operation, subject to applicable State regulations; and
- (2) shall allow for retention of fish that are subject to a moratorium declared under this section and unavoidably taken as incidental catch in fisheries directed toward menhaden if -
 - (A) discarding the retained fish is impracticable;
 - (B) the retained fish do not constitute a significant portion of the catch of the vessel; and
 - (C) retention of the fish will not, in the judgment of the Secretary, adversely affect the conservation of the species of fish retained.
- (e) Prohibited acts during moratorium
During the time in which a moratorium under this section is in effect, it is unlawful for any person to -
 - (1) violate the terms of the moratorium or of any implementing regulation issued under subsection (d) of this section;
 - (2) engage in fishing for any species of fish to which the moratorium applies within the waters of the State subject to the moratorium;
 - (3) land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium or of any implementing regulation issued under subsection (d) of this section;
 - (4) fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies, except as provided by regulations issued under subsection (d) of this section;
 - (5) refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter;
 - (6) forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this chapter;
 - (7) resist a lawful arrest for any act prohibited by this section;
 - (8) ship, transport, offer for sale, sell, purchase, import, or have custody, control, or possession of, any fish taken or retained in violation of this chapter; or
 - (9) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(f) Civil and criminal penalties

(1)

Any person who commits any act that is unlawful under subsection (e) of this section shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson-Stevens

Fishery Conservation and Management Act (16 U.S.C. 1858).

(2)

Any person who commits an act prohibited by paragraph (5), (6), (7), or (9) of subsection (e) of this section is guilty of an offense punishable as provided by section 309(a)(1) and (b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859(a)(1) and (b)).

(g) Civil forfeitures

(1)

Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or as the result of, the commission of any act that is unlawful under subsection (e) of this section, shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1860).

(2)

Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed in regulation.

(h) Enforcement

A person authorized by the Secretary or the Secretary of the department in which the Coast Guard is operating may take any action to enforce a moratorium declared under subsection (c) of this section that an officer authorized by the Secretary under section 311(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(b)) may take to enforce that Act (16 U.S.C. 1801 et seq.). The Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a State in carrying out that enforcement

Sec. 5107. - Financial assistance

The Secretary and the Secretary of the Interior may provide financial assistance to the Commission and to the States to carry out their respective responsibilities under this chapter, including -

(1)

the preparation, implementation, and enforcement of coastal fishery management plans; and

(2)

State activities that are specifically required within such plans

Appendix A-3

Atlantic States Marine Fisheries Commission

APPEALS PROCESS

Approved by the ISFMP Policy Board

August 18, 2004

Background

The Atlantic States Marine Fisheries Commission's interstate management process is based on the voluntary commitment and cooperation of the states. The involved states have frequently demonstrated their willingness to compromise and the overall process has proven to be very successful. However, there have been instances where a state/jurisdiction has expressed concern that the Board decisions have not been consistent with language of an FMP, resulted in unforeseen circumstances or impacts, did not follow established processes, or were based on flawed technical information. In order to address these concerns, the ISFMP Policy Board charged the Administrative Oversight Committee with "exploring and further developing an appeals process".

Under the current management process the primary policy development responsibility lies with species management boards. And, in the case of development of new fishery management plans or amendments the full Commission has final approval authority prior to implementation. The purpose of the appeals process is to provide a mechanism for a state/jurisdiction to petition for a management decision to be reconsidered, repealed or altered. The appeals process is intended to only be used in extraordinary circumstances where all other options have been exhausted. The management boards have the ability to go back and correct errors or address additional technical information through the recently clarified process on "amending or rescinding previous board actions".

During the December 2003 ISFMP Policy Board meeting, the decision was made to continue to have the Policy Board serve as the deliberative body that will consider valid appeals. This decision is consistent with the language that is included in the ISFMP Charter. However, the Charter does not provide detailed guidance on how an appeal is to be addressed.

This paper details for the Commission appeals process.

Appeal Criteria –The intent of the appeals process is to provide a state with the opportunity to have a decision made by a species management board or section reconsidered by the Policy Board. The following criteria will be used to guide what type of decisions can be appealed. In general, management measures established through the FMP/amendment/addendum process can be appealed. However, the appellant must use one of the following criteria to justify an appeal:

1. Decision not consistent with FMP
2. Failure to follow process
3. Insufficient/inaccurate/incorrect application of technical information
4. Historical landings period not adequately addressed

5. Management actions resulting in unforeseen circumstances/impacts

The following issues could not be appealed:

1. Management measures established via emergency action
2. Out-of-compliance findings (this can be appealed but, through a separate, established process)
3. Changes to the ISFMP Charter

Appeal Initiation – The ISFMP Charter provides that a state aggrieved by a management board action can appeal to the ISFMP Policy Board. Any state can request to initiate an appeal; also a group of states can submit a unified request for an appeal. The states are represented on the Commission by three representatives that have the responsibility of acting on behalf of the states’ Executive and Legislative branches of government. Therefore, in order to initiate an appeal all seated Commissioners (not proxies) of a state’s caucus must agree that an appeal is warranted and must sign the letter submitted to the Commission. If a multi-state appeal is requested all the Commissioners from the requesting states must sign the letter submitted to the Commission. During meetings where an appeal is discussed proxies will be able to participate in the deliberations. Meeting specific proxies will not be permitted to vote on the final appeal determination, consistent with Commission policy.

A state (or group of states) can request and appeal on behalf of the Potomac River Fisheries Commission, District of Columbia, National Marine Fisheries Service, or the United States Fish and Wildlife Service.

The letter requesting an appeal will be submitted to the Chair of the Commission and include the measure(s) or issue(s) being appealed, the justification for the appeal, and the commitment to comply with the finding of the Policy Board. This letter must also include a demonstration that all other options to gain relief at the management board level have been exhausted. This letter must be submitted via certified mail at least **45 days** prior to a scheduled ASMFC Meeting Week. The Commission Chair, Vice-Chair and immediate past Chair will determine if the appeal meets the qualifying guidelines and notify the Policy Board of their decision. If the immediate past chair is no longer a commissioner the Chair will select an alternate from a state that is not affected by the appeal.

Convene a “Fact Finding” Committee (optional) -- Upon review of the appeal documentation, the Commission Chair, Vice-Chair and immediate past Chair (or alternate if necessary, as described above) may establish a “Fact Finding” Committee to conduct analyses and/or compile additional information if necessary. This group will be made up of individuals with the technical expertise (including legal, administrative, social, economic, or habitat expertise if necessary) and familiarity with the fishery to conduct the necessary analysis. If such a committee is convened the schedule included in the last section of this document may need to be adjusted to provide time for the Committee to conduct analyses. The Commission Chair, Vice-Chair and immediate past Chair (or alternate if necessary, as described above) may set a deadline for the Committee to complete its work to ensure the appeal is addressed in a timely manner.

ISFMP Policy Board Meeting –Following the determination that an appeal has met the qualifying guidelines, a meeting of the Policy Board will be convened at a scheduled ASMFC meeting week. The agenda of this meeting will be set to allow sufficient time for all necessary presentations and discussions. The Chair of the Commission will serve as the facilitator of the meeting. If the Chair is unable to attend the meeting or would like to more fully participate in the deliberations, the Vice-Chair of the Commission will facilitate the meeting. The ISFMP Director will provide the background on the development of the management program as well as a summary of the justification provided in the record for the management board’s action. The ISFMP Director will also present the potential impacts of the appeal on other affected states. The appellant Commissioners will present their rationale for appealing the decision and provide a suggested solution. The Policy Board will then discuss the presentations and ask any necessary questions. The Board will vote to determine if the management board’s action was justified. A simple majority of the Policy Board is required to forward a recommendation to a management board for corrective action. If the Policy Board determines that the existing management program should be modified, it will issue a finding to that effect as well as any guidance regarding corrective action to the appropriate species management board. The referral may be worded to allow the management board flexibility in determining the details of the corrective action.

Upon receipt of the Policy Board’s recommendation the management board will discuss the findings and make the necessary changes to address the appeal. The management board is obligated to make changes that respond to the findings of the Policy Board. A simple majority of the management board will be necessary to approve the changes.

Appeal Products and Policy Board Authority—Following the Policy Board meeting a summary of the meeting will be developed. This summary will include a detailed description of the findings and will be forwarded to the appropriate management board and Policy Board upon completion. If the Policy Board determines that changes to the management program are necessary, the summary may include guidance to the management board for corrective action. The report of the Policy Board will be presented to the management board for action at the next scheduled meeting.

Considerations to Prevent Abuse of the Appeals Process – The appeals process is intended to be used only in extraordinary situations and is in no way intended to provide a potential avenue to preempt the established board process. The initiation of an appeal will not delay the Commission process for finding a state out of compliance nor delay or impede the imposition of penalties for delayed compliance.

Limiting Impacts of Appeal Findings – If a state is successful in an appeal and the management program is altered, another state may be negatively impacted by the appeals decision. In order to prevent an appeals “chain reaction,” the Policy Board’s recommendation and the resulting management board’s decision will be binding on all states. All states with an interest in the fishery will be obligated to implement the changes as approved by the management board. Upon completion of the appeals process, a state is not precluded from taking further action beyond the Commission process to seek relief.

If the Policy Board supports the appeal and determines that corrective action is warranted, the potential for management changes to negatively impact other states will be evaluated by the Policy Board and the species management board.

Appeals Process Timeline

1. Within **15 working days** of receipt of a complete appeal request the Commission Chair, Vice-Chair, and immediate past chair (or alternate) will determine if the state has an appeal which meets the qualifying guidelines.
2. Upon a finding that the appeal meets the qualifying guidelines, the appeal will be included on the agenda of the ISFMP Policy Board meeting scheduled during the next ASMFC Meeting Week (provided an adequate time period is available for preparation of the necessary documentation).
3. Following the finding that an appeal meets the qualifying guidelines, Commission staff and the appellant commissioners will have a minimum of **15 working days** to prepare the necessary background documents.
4. The background documents will be distributed at least **15 days** prior to the Policy Board meeting.
5. A summary of the Policy Board meeting will be developed and distributed to all Commissioners within **15 working days** of the conclusion of the meeting.

Appendix A-4



ROY COOPER
ATTORNEY GENERAL

State of North Carolina
Department of Justice
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REPLY TO: Francis W. Crawley
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MEMORANDUM

TO: North Carolina Marine Fisheries Commission

FROM: Francis W. Crawley *fwc*
Special Deputy Attorney General

DATE: May 19, 2006

RE The Commission's Relationship with the Atlantic States Marine Fisheries Commission and the United States in Fisheries Management Matters

Two memoranda authored by Assistant Attorney General Tim Nifong in 1993 and 1995 addressed the Atlantic States Marine Fisheries Commission's (ASMFC) authority over striped bass in State waters and the effect of withdrawal from the ASMFC. The relevant conclusions in these detailed memoranda are incorporated into this memorandum but Mr. Nifong's writings need not be fully reproduced; they are available from the Division of Marine Fisheries.¹

The following questions were asked during the April 2006 Commission meeting and will be addressed.

- I. Is the ASMFC covered under the Magnuson-Stevens Fishery Conservation Act, 16 USC 1801, et seq.? Answer: No

The ASMFC was created by an interstate compact entered into by the Atlantic coastal states. In 1949, the General Assembly codified the terms of the Compact in G.S. § 113-251 to § 113-253, and North Carolina became a member of the Commission that year. Originally the ASMFC made recommendations to the states for joint fishery management at the state level. Today the ASMFC is authorized by the Atlantic Coastal Fisheries Cooperative Management Act, 16 USC §§ 5101, et seq., to adopt Fishery Management Plans (FMP) for coastal fisheries resources that are located in or move between several states, or which occur in both state and federal waters. The Act requires the member States to implement the FMPs and comply with the management

¹ This is an advisory memorandum. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

requirements set forth in the Plans. If the ASMFC determines that a State is not in compliance with the requirements of a plan, the U.S. Secretary of Commerce, after making required findings may impose a moratorium on fishing in the fishery with the State's waters. The Act authorizes the Secretary of Commerce to enforce a moratorium and incorporates the civil and criminal penalty provisions found in the Magnuson-Stevens Act.

II. How can the State withdraw from the ASMFC? Answer: The State May Withdraw by Following the Procedure in Article XII of the Compact.

North Carolina joined the ASMFC by the action of the General Assembly in passing G.S. § 113-252, *et seq.* The legislation specifies the three members from North Carolina and the Marine Fisheries Commission is not represented. Article XII of the Compact provides "this compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this Compact must be preceded by sending six month's notice in writing of intention to withdraw from the Compact to the other states party hereto." G.S. § 113-252. Furthermore, the governor is required to execute and transmit the notice of intention to withdraw in accordance with Article XII. G.S. § 113-253. The decision to withdraw from the Compact rests with the General Assembly. Withdrawal would be accomplished by the General Assembly's directing the Governor to send the notice of intention required by Article XII which would be followed by the repeal to Article 19 of Chapter 113 of the General Statutes, the current statutes concerning the Compact.

III. What Consequences Would Result from Withdrawal from the ASMFC?

If North Carolina acts in accord with Article XII and effects a withdrawal from ASMFC, the State will no longer have any rights or powers concerning the Commission as set forth in the Compact. North Carolina will lose its representation and its right to vote on the adoption of FMPs that affect coastal fishery resources occurring in State waters.

A second consequence would be that North Carolina would continue to be held to the requirements of FMPs adopted by the ASMFC, but would not have a vote or any way to influence FMP development. The Atlantic Coastal Cooperative Management Act, 16 USC § 1501 *et seq.*, extends to all jurisdictions on the Atlantic where coastal fishery resources within the meaning of the Act occur, not just to the current members of the Compact. Therefore, North Carolina would continue to be subject to the Act's requirement that the State implement and enforce the fishery management plans for its fisheries even after a withdrawal from the ASMFC.²

The ultimate consequence following from the State's failure to implement and enforce ASMFC fishery management plans applicable to coastal fishery resources occurring in North Carolina would be federal closure of any fisheries that are not being conducted in compliance with an ASMFC plan. Individuals violating the closure would

² Nifong memo to Sherri Evans-Stanton, 29 March 1995.

be subject to federal civil and criminal penalties. In addition the State would be unable to enforce its regulations in the E-E-Z to the extent the States rules are inconsistent with federal plans.

In carrying out the General Assembly's directive to adopt FMPs for commercially or recreationally significant species of fisheries, G.S. § 113-182-1, the Marine Fisheries Commission adopted the Interjurisdictional Fishery Management Plan. The FMP adopts by reference the management measures required by FMPs approved by the Councils and the ASMFC. These management measures are then adopted as the State's management measures for the affected fisheries. A consequence of withdrawal from the ASMFC and rejection of the federal management measures would be a possible finding of non-compliance by the ASMFC and the Secretary of Commerce's closing the affected fisheries in the State's coastal waters.

- IV. What is the Relevant Authority of the Marine Fisheries Commission?
Answer: The Commission Exercises Regulatory Authority Through Rulemaking.

The Marine Fisheries Commission exercises only those powers that have been delegated to it by the General Assembly, State ex. rel. Commissioner of Insurance v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, reh'g denied, 301 N.C. 107, 273 S.E. 2d 300 (1980). The Commission is authorized to regulate all marine and estuarine resources in coastal fishing waters, and exercises this authority through rulemaking. Additionally, the Commission is given authority to adopt rules to comply with a FMP adopted by the ASMFC or the U.S. Secretary of Commerce. § 143B-289.52(e).

The authority to administer and enforce the statutes and regulations pertaining to coastal fisheries is expressly given to the Department. G.S. § 113-181. By statute, the commission is authorized to initiate a legal action only to contest the claim of title or claimed right of fishery in any navigable water that was registered as required by G.S. § 113-206.

Challenges to regulations implementing federal FMPs have been filed in the Federal District Court by fisherman or associations of fisherman who have been directly affected by the regulation. See Fisherman's Dock Cooperative v. Brown, 75 3d 164 (4th Circuit) (1996); NC Fisheries Association, Inc., et al. v Evans, 172 F Supp 2d 792 (Eastern District Va) (2001); NC Fisheries Association, Inc., et al. v. Brown, 917 F Supp 1108 (Eastern District Va) (1996). In several instances the State of North Carolina has intervened as a plaintiff on relation of the Governor. NC Fisheries Association, Inc., et al. v. Brown, 917 F Supp 1108; NC Fisheries Association, Inc. et al. v. Evans, 152 F Supp 2d 870, (Eastern District Va) (2001); NC Fisheries Association, Inc. et al. v Daley, 16 F Supp 2d 647, (Eastern District Va) (1997).

In conclusion, the decision to continue membership in the ASMFC rests with the General Assembly and, regardless of the State's membership status, North Carolina coastal waters will be subject to FMPs adopted by the ASMFC.

APPENDIX B SPECIES SUMMARY

The state of North Carolina currently participates in the development and implementation of the following ASMFC or federal Council FMPs that comprise the management units for the North Carolina Interjurisdictional Fishery Management Plan. These FMPs are being placed in an appendix to facilitate updates, acknowledging the changing nature of rules and regulations developed under these FMPs for which North Carolina must comply. Table B-1 provides the compliance measures taken in North Carolina for finfish species or species groups managed under the jurisdiction of the ASMFC or Federal Councils. The list of North Carolina representatives (DMF staff and North Carolina citizens) involved in plan development may likewise change over time and are thus contained in Appendix C.

ATLANTIC STATES MARINE FISHERIES COMMISSION (ASMFC)

American Eel:

The ASMFC initially approved the American Eel FMP in 1999, with the last review and approval in November 2005. The eel pot fishery is responsible for virtually all the harvest of American eel in North Carolina waters. Participation and landings from this fishery peaked during the late 1970's to early 1980's then declined to the present low but stable level by the early 1990's. The current stock status of the American eel is unknown. An ASMFC benchmark stock assessment was completed then reviewed in February 2006. The management board accepted the stock assessment as complete; however, after considering the peer review advisory report the board did not approve this document for management purposes. Reference points or quantifying stock status in the assessment was prevented due to insufficient data. Because of this, the status of the stock remains uncertain. An independent panel of fisheries scientists reviewed the stock assessment and concurred with its findings that eel abundance was likely much higher in the late 1970s to mid-1980s. Further, that the abundance of yellow eel has declined in the last two decades and the stock is at or near historic low levels coast wide. Because of these findings ASMFC approved Addendum 1 to the FMP in February 2006. This addendum requires states to establish a mandatory trip-level catch and effort monitoring program, including the documentation of the number of units fished and unit soak time. State compliance to Addendum 1 is required by January 2007. Also American eel is under going a status review under the Endangered Species Act, the findings of which may significantly alter the species' management. In the interim, the American Eel Plan Development team has been charged by the Management Board to develop management measures to prevent further declines in eel abundance and to promote an increase in spawning stock. In 2007 ASMFC is developing Addendum II to the FMP that will likely include additional harvest restrictions.

Atlantic Croaker:

The ASMFC initially approved the Atlantic croaker FMP in 1987, with the most recent review and approval in November 2005. Also in November 2005, ASMFC approved Amendment 1 to the FMP. Amendment 1 recommends the establishment of biological reference points to allow for resource management on a coast wide basis, the restoration and maintenance of essential habitat, and the development of research needs to improve future stock assessments. With the

implementation of Amendment 1 to the FMP, the Technical Committee will be conducting stock assessments every five years unless prompted by the completion of annual trigger exercises. The primary trigger is based on landings data; Amendment 1 states that a stock assessment will be triggered if the most recent year's commercial or recreational landings are less than 70% of the previous two years' average landings.

The Atlantic croaker population in the mid-Atlantic region is currently not overfished and overfishing is not taking place. The fishing mortality (F) target and threshold rates, 0.29 and 0.39 respectively, are used to determine if croaker is experiencing overfishing. The target and threshold spawning stock biomass (SSBs), 28,932 metric tons and 20,252 metric tons respectively, are used to determine if croaker is in an overfished state. However, the estimates of F and SSB do not include bycatch from the shrimp fishery, a potentially significant source of mortality. This is a recruitment driven stock where abundance appears to be dependant on natural environmental conditions.

Atlantic Menhaden:

Management of the Atlantic menhaden falls under the jurisdiction of the ASMFC Atlantic Menhaden FMP. It is managed as a single unit stock with a range from the Gulf of Maine to central Florida. The Atlantic menhaden FMP was originally approved by the ASMFC in 1981. Amendment 1 replaced that plan in 1992. Neither plans included restrictions on fishing. The stock was recruitment overfished during the mid-1960s to the mid-1970s, but recovered well by the mid 1980s and is presently reduced in size, but not overfished. Although the spawning stock is considered adequate, recruitment has been poor since the late 1980s because of unidentified environmental factors that control spawning success. The fishery has declined greatly over the last 25 years, primarily for economic and social reasons, as the coastal areas occupied by the plants have become urbanized. Only one processing plant located in Virginia remains in the Atlantic coast reduction fishery, but those vessels land a greater volume of fish than any other Atlantic coast commercial fishery.

Addendum I was passed in August of 2004 and makes modifications to the plan's biological reference points, schedule for stock assessments and habitat section. This action is based on recommendations of the Menhaden Technical Committee in its 2003 stock assessment, which found that menhaden are not overfished and overfishing is not occurring on a coastwide basis. The assessment uses a new modeling approach (Forward Projection Model) and fecundity-based biological reference points to determine stock status. These reference points are more accurate and take into account the number of mature ova (eggs). This is a significant departure from the way menhaden assessments have been conducted in the past. The Addendum changes the fishing mortality target and threshold levels as recommended by the Menhaden Technical Committee and supported by the peer review. Rather than conducting a full-scale annual assessment, the addendum proposes a three-year assessment cycle to allow for the increased complexity and data requirements of the new model. The Technical Committee will continue to meet annually to review the current year's landings and indices. A new assessment may be initiated if there are indications of a significant change in stock status.

Addendum II was passed by the Menhaden Board in October of 2005 and addresses concerns

about the possibility of localized depletion of menhaden stocks in the Chesapeake Bay. This addendum institutes a harvest cap on Atlantic menhaden by the reduction fishery in Chesapeake Bay at 106,000 metric tons (the average landings from 2000-2004). Over-harvest would be deducted from the following year's quota but any amount of under-harvest would not be transferred. This cap will be in place for the 2006 fishing season. It also addresses research priorities for the determination of the status of menhaden populations in the Chesapeake Bay and assess whether localized depletion is occurring.

Addendum III was passed in October 2006 and establishes an annual cap on reduction fishery harvests in Chesapeake Bay of 109,020 metric tons, based on the average landings from 2001 – 2005. The cap will be implemented in 2006 and extend through 2010. Harvest for reduction purposes will be prohibited in the Chesapeake Bay when 100% of the cap is landed. Over-harvest in any given year would be deducted from the next year's quota. The Addendum also includes a provision allowing under-harvest in one year to be credited only to the following year's harvest, not to exceed 122,740 metric tons.

Every year, the Technical Committee (TC) reviews the stock status of Atlantic menhaden by analyzing landings, Catch Per Unit Effort (CPUE), Catch at Age, and the Indices used in the 2003 stock assessment and calculate the triggers set in Addendum 1. These triggers are:

- The CPUE index falls below the 5th percentile for the past 20 years
- The ratio of ages 2-4 to the total catch of all ages falls below the second standard deviation unit over the last 20 years

If the TC, after reviewing the data and calculating the triggers, finds that the stock status has significantly changed, a full assessment will be conducted for that year. The TC has reviewed the stock status every year since 2003 and has not found significant changes since the 2003 stock assessment.

The Atlantic Menhaden Stock Assessment Subcommittee conducted an updated stock assessment for 2006 as required by Addendum 1 and conducted two data workshops where data and methodology were evaluated and finalized. Data included abundance indices, recorded landings, and samples of annual size and age compositions from the landings. A new vector of natural mortality at age was obtained from the recently peer-reviewed MSVPA-X model to replace the vector used in the 2003 assessment. However, unrealistically high levels of adult natural mortality were estimated when the new natural mortality (M)-at-age vector was used. It was decided by the Stock Assessment Subcommittee to scale this vector so that adult natural mortality matched historical tagging results and remained in keeping with the peer-reviewed results of the 2003 assessment. New benchmarks were estimated based on results of the 2006 Stock Assessment. The 2005 estimate of fishing mortality was estimated to be 56% of its limit (and 91% of its target) and population fecundity was estimated at 158% of its fecundity target (and 317% of its limit). Therefore the stock is not considered to be overfished, nor is overfishing occurring.

Atlantic Striped Bass:

In 1981 the ASMFC developed and adopted the Interstate Fishery Management Plan for Atlantic Striped Bass. Atlantic migratory striped bass are currently managed under Amendment 6 of the FMP, which was approved in 2003. Striped bass constitute major recreational and commercial fisheries from Maine to North Carolina. Commercial landings along the east coast peaked at nearly 15 million pounds in 1973. Harvest declined by 77% to 3.5 million pounds in 1983, resulting in a moratorium on the harvest of the Atlantic migratory population. The fishery reopened in 1990, and the stock was declared recovered in 1997. An updated stock assessment for the ocean stock is conducted annually by the striped bass Technical Committee. North Carolina manages its commercial harvest of the Atlantic migratory population with a total allowable catch (TAC) currently set at 480,480 pounds. Recreational harvest is set at a two fish per person daily creel limit. All ocean fisheries adhere to a 28-inch total length minimum size limit.

Fisheries in the Albemarle Sound Management Area (ASMA) and Roanoke River Management Area (RRMA) are also managed under an ASMFC TAC, currently set at 550,000 pounds. The joint WRC and MFC North Carolina Estuarine Striped Bass FMP was approved in May 2004 (MFC) and July 2004 (WRC) and included the Central Southern Management Area (CSMA). The CSMA is strictly under state management. Regulations differ by management area, but include an 18-inch total length minimum size limit, a slot limit, season closures, no more than three fish daily creel limit (recreational only), gill net restrictions, commercial trip limits, a 50% bycatch provision for commercial trips (not in CSMA) and recreational (not in CSMA) and commercial quotas. The North Carolina Striped Bass Cooperative must submit a fishing plan annually to the ASMFC for the ASMA and the RRMA. The ASMFC Striped Bass Management Board must approve any changes in the upcoming year's fishing plan before the seasons open.

Atlantic Sturgeon:

The Atlantic States Marine Fisheries Commission adopted an interstate management plan for Atlantic sturgeon in 1990. Among the management recommendations of that plan was the statement that states should adopt:

- Minimum size limit of 2.13 m TL and institute a monitoring plan;
- A moratorium on all harvest; or
- An alternative measure to be submitted to the Plan Review Team for determination of conservation equivalency.

In North Carolina, effective September 1, 1991, the Marine Fisheries Commission made it unlawful to possess sturgeon. Amendment 1 to the Atlantic sturgeon FMP was approved in July 1998. The goal of this amendment is to restore Atlantic sturgeon spawning stocks to population levels that will provide for sustainable fisheries, and ensure viable spawning populations. In order to achieve this goal the plan sets forth the following objectives:

- Establish 20 protected year classes of females in each spawning stock;
- Close the fishery for a sufficient time period to reestablish spawning stocks and increase numbers in current spawning stocks;
- Reduce or eliminate bycatch mortality;

- Determine the spawning sites and provide protection of spawning habitats for each spawning stock;
- Where feasible, reestablish access to historical spawning habitats for Atlantic sturgeon; and
- Conduct appropriate research as needed.

At the request of North Carolina in May 2005, the Atlantic Sturgeon Management Board (Board) approved Addendum II to Amendment 1 to Interstate Fishery Management Plan (FMP) for Atlantic Sturgeon. Addendum II provided an exemption to LaPaz Group LLC permitting it to import Atlantic sturgeon fry/fingerlings, produce fish, and sell the meat of the fish. It also gave an exemption to Acadian Sturgeon and Caviar to allow for the importation of its Atlantic sturgeon to North Carolina. This Addendum provides exemptions to allow LaPaz to import Atlantic sturgeon from Supreme Sturgeon and Caviar of Penfield, New Brunswick, for commercial aquaculture production and sale in North Carolina. Addendum III complements Addendum II. by providing the Atlantic Sturgeon Management Board the ability to modify the details of the exemption in these Addendum through a Board vote. Addendum III was effective in November 2006. These actions are intended to provide a domestic product through an environmentally and socially sound aquaculture operation.

Black Sea Bass (North of Cape Hatteras):

The stock north of Cape Hatteras is currently managed under the joint Atlantic States Marine Fisheries Commission/Mid Atlantic Fishery Management Council (ASMFC/MAFMC) Fishery Management Plan (FMP) for Black Sea Bass. Management measures include commercial quotas, minimum mesh sizes for trawls, escape vents for pots, and minimum fish size limits. Amendment 13 to the FMP established the implementation of a state-specific allocation of the coastwide quota. Given the uncertainty of the survey estimates and the June 2006 stock assessment review comments that questioned the current biological reference points, the Council and the Board recommended that the total allowable landings (TAL) be reduced from 8.0 million pounds in 2006 to 6.5 million pounds in 2007. Based on landings data from 1983-1992, 49% of the TAL is allocated to the commercial fishery and 51% is allocated to the recreational fishery. Research set-aside is then subtracted from the TAL, and the quotas are further adjusted for overages. As such, NC's preliminary commercial quota (11%) for North of Cape Hatteras for 2007 is ~ 350,350 lbs. In addition, beginning January 1, 2007, circular vent size for black sea bass pots must be increased to 2-1/2", and 2 escape vents must be installed in the parlor portion of the trap.

The most recent assessment completed in June 2006 (the stock was last assessed in 2004, SARC-39). The assessment covers the stock of black sea bass off the northeast coast of the USA between Cape Hatteras and the Gulf of Maine. The northern stock of black sea bass was evaluated on state and federal survey data, trends in landings and analysis of tag recapture information. The stock assessment indicated that the stock is overfished and overfishing is not occurring. The present benchmarks for black sea bass is F_{max} as a proxy for F_{msy} . The most recent estimate of F for fall 2004-2005 was equal to 0.32, below F_{max} (0.33), and therefore overfishing is not occurring. A proxy for the minimum biomass threshold is based on a three point moving average of exploitable biomass from the NEFSC spring survey indices. The

average biomass index for 2004-2006 (0.80 kg/tow) was below the biomass threshold proxy (0.98 kg/tow), and therefore black sea bass north of Hatteras are considered overfished.

The Black sea bass stock assessment was reviewed at SARC-43 (June 2006). The Center of Independent Experts (CIE) panel called to question the biological reference points used in the black sea bass assessment and deemed them inappropriate for management. Reviewers noted large variances and sensitivity of the analyses to changes in scale (e.g., arithmetic vs. logarithmic). That is, the assessment team has chosen to use geometric mean catch rates to reduce the effect of large catches on temporal trends, but the management plan uses arithmetic means for evaluating current biomass (3-year mean) against the biomass threshold (mean SSB index for 1977-1979). A tagging program for black sea bass between Massachusetts and North Carolina, initiated in September 2002, formed the basis for estimating exploitation rate. A clear and consistent pattern of seasonal along shore and cross-shelf patterns of migration was evident, and the tagging program provided a substantial contribution to understanding of the migration patterns. However, there is a possibility that the tagging estimates of F could be biased due to spatial dynamics of the stock since the tagging model used does not account for these well-defined migration patterns. The CIE called to question the resulting estimates as not adequate to provide credible fishery management advice.

Given the SARC-43 CIE panel review and lacking a peer-reviewed alternative for biological reference points for black sea bass, the MAFMC Black Sea Bass Committee agreed to rely on the current definitions of biomass thresholds until new analyses establish acceptable alternatives. This approach acknowledges the limitations of the existing reference points, limits the scope of projected changes in landings, and accelerates the development of revised reference points.

Bluefish:

The Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC) jointly manage bluefish under Amendment 1 to the Bluefish Fishery Management Plan (FMP). The FMP defines the management unit as bluefish occurring in U.S. waters of the western Atlantic Ocean and is considered a single stock of fish. After it was implemented in July 2000, Amendment 1 initiated a ten-year rebuilding schedule to eliminate overfishing and allow for stock rebuilding to a level which would support harvests at or near maximum sustainable yield (MSY) by the year 2010 or earlier.

The FMP allows a state-by-state commercial quota system and recreational harvest limit to reduce fishing mortality. The ASMFC and MAFMC adjust both annually by the specification setting process that is detailed in Amendment 1. Amendment 1 outlines a series of permitting and reporting requirements such as the requirement of operator permits for commercial, party, and charter boats; vessel permits for commercial, party and charter boats, as well as, dealer permits. The Monitoring Committee is responsible for reviewing the best available data on an annual basis and recommending commercial and recreational management measures designed to ensure that the resource does not exceed the target fishing mortality rate.

In June 2005, SARC 41 reviewed a forward projection model called ASAP (NOAA Fisheries Toolbox). This model is similar to the ADAPT VPA but provides greater flexibility in handling

the shape of the selectivity curve and allows for error in the catch-at-age matrix. The ASAP model was updated with 2005 landings and survey indices in order to generate a projection using a target fishing mortality rate of 0.152 which would achieve the F/F_{msy} ratio estimated for 2005. Projection results indicate a yield (TAC) of 14,530 mt (32,032,838 pounds) in 2007 that would be associated with an F=0.152. Given the endorsement of the use of the ASAP model for management purposes, the model projections represent the best available information on bluefish stock status and potential yield. Based on estimated discards of 4,270,568 pounds (average recreational discards from 2000-2005), the overall TAL would be 27,762,270 lbs for 2007.

Based on the stock assessment update, the Council and Board adopted a TAL of 27.76 million pounds for bluefish, an increase of nearly 3 three million pounds from 2006. Amendment 1 establishes a state-by-state quota system where state quotas are based on the historic proportion of commercial and recreational landings for the period 1981-1989: 17% of the total allowable landings will be allocated to the commercial fishery, and 83% of the total allowable landings would be allocated to the recreational fishery. As such, the commercial TAL is 4,719,586 lbs (quota) and the recreational TAL is 23,042,684 lbs (harvest limit) for 2007. Based on recreational landings in the past 10 years, it is expected that the recreational sector will land less than the 83% recreational harvest limit. Staff recommended a transfer of 4,780,414 lbs of the recreational to commercial TAL for 2007. As a result of this transfer, the recreational harvest limit for 2007 would be 18.26 million lbs and the commercial quota would be 9.5 million lbs.

Each state is required to close its waters to fishing when its share of the commercial quota is landed. North Carolina's commercial quota (32.608 %) increased slightly from 2006 to 3,045,776 lbs for 2007. The recreational fishery is managed through an annual framework of possession limits, size limits, and seasonal closures. Since recreational landings decreased in recent years, the Mid-Atlantic Council recommended an increase in the recreational possession limit from 10 to 15 fish in 2001. North Carolina increased the bluefish bag limit to 15 fish (proclamation effective 6/19/2001), and the NC Marine Fisheries Commission adopted a rule whereby only 5 of the 15 fish bag limit can be >24" TL (effective 4/01/2003). The possession limits will remain at 15 fish for 2007.

Red Drum:

Red drum in North Carolina are managed both by a state and federal FMP. The NC Red Drum FMP was approved in March 2001 and the ASMFC Red Drum FMP Amendment 2 was approved in June 2002. The state FMP will be updated in 2006-2008, while the ASMFC plan is scheduled for update in 2008.

The primary goal of both the state and federal plan is to prevent overfishing and both plans have set a threshold of 30% spawner potential ratio (SPR) as an overfishing definition and 40% SPR as the optimum yield for the fishery. Specifically, the management goal for Amendment 2 is to achieve and maintain the Optimum Yield for the Atlantic coast red drum fishery as the amount of harvest that can be taken by U.S. fishermen while maintaining the SPR at or above 40%. The regulatory requirements of Amendment 2 state that:

- All states are required to implement red drum harvest controls (e.g. bag and size limits) in order to achieve a minimum 40% SPR.

- A maximum size limit of 27 inches or less shall be implemented for all red drum fisheries.
- All states must maintain current or more restrictive commercial fishery regulations for red drum, i.e. no relaxation of current fisheries management measures.

Prior to the development of Amendment 2, North Carolina through the implementation of the state Red Drum FMP had taken a series of preventative measures in the red drum fishery to reduce fishing mortality. At the time Amendment 2 was approved, North Carolina regulations included: a slot limit ranging from 18 to 27 inches fork length in all fisheries, a one fish recreational bag limit, the continuation of a 250,000 pound commercial harvest cap, and an allowance of a 7 fish daily commercial trip limit provided that at least 50% (by weight) of all edible finfish landed are something other than red drum. As a result of these pro-active measures taken prior to the development of Amendment 2, North Carolina had no additional regulatory changes to implement when Amendment 2 was approved.

One major change since the development of Amendment 2 is that in August 2003, the ASMFC South Atlantic Board approved a motion to allow the NC Fisheries Director to raise or lower the current seven fish commercial trip limit while maintaining the 250,000 pound harvest cap. However, the seven fish commercial trip limit has remained unchanged up to this point. It is important to note that by enacting the 7 fish commercial trip limit, North Carolina has realized a decrease in commercial landings of over 40% when compared to the previous management program which did not restrict red drum harvest at the trip level. In addition, the requirement that 50% of the landings for a commercial trip be of a finfish other than red drum further reduces landings and ensures that there is no directed fishery. These commercial restrictions along with the recreational bag limit of one fish 18-27 inches TL provide North Carolina with an estimated SPR value of 40.6% according to the bag and size limit analysis reported in Amendment 2 (page 92, Table 19).

The Red Drum Technical Committee has reviewed North Carolina's commercial restrictions and concurred that the 40.6% SPR estimate from the bag and size limit analysis is appropriate. It should be noted that compliance requires that states implement management measures which are estimated to meet the 40% SPR. Relaxation of current regulations may reduce projected SPR values below the target of 40%. These SPR estimates are projected values based on reductions in harvest in both the recreational and commercial fisheries. The actual SPR values for this period will not be known until the completion of the next stock assessment. The current 250,000 pound commercial cap has no biological basis but was implemented rather to prevent expansion in the existing fishery. It is the commercial trip limit of 7 fish that provided North Carolina with the necessary reduction in harvest to meet the projected 40% SPR called for in Amendment 2 to the ASMFC Red Drum plan.

Scup:

Scup is one of four species jointly managed by the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council. In 1996, both the Commission and the Council adopted the Fishery Management Plan and Addendum 1 for Scup. (In the NMFS version, this is Amendment 8 and the Regulatory Amendment to the FMP for Summer Flounder,

Scup and Black Sea Bass). The FMP defines the management unit as scup in US waters from Cape Hatteras northward to the US-Canadian border, and includes a seven-year plan for reducing fishing effort and restoring the stock. Exploitation rates were to be reduced to 47% ($F=0.72$) in 1997-1999, to 33% ($F=0.45$) in 2000-2001, and to 21% ($F_{max}=0.26$) in 2002 through coastwide commercial quotas and recreational season, size and possession limits that are established on an annual basis. The primary concerns are excessive discarding of scup and near collapse of the stock. The FMP has been amended several times since its initial implementation, with each amendment enacting comprehensive management measures to attain annual fishing targets and address overfishing.

The target exploitation rate for scup in 2002 and subsequent years is 21%. The total allowable catch (TAC) associated with that rate is allocated 78% to the commercial sector and 22% to the recreational sector. Estimates of discards used in the 2007 TAC calculations were based on the average of the 2004 and 2005 discard estimates for the commercial fishery and the recreational fishery. The commercial discards were estimated using the NEFSC observer program data and dealer data, are preliminary, and have not been peer reviewed. The recreational discards were estimated using data from MRFSS. Discard estimates are deducted from both TACs to establish total allowable landings for both sectors. The commercial TAC, discards, and TAL is allocated to three different periods; winter I (45.11%), summer (38.95%), winter II (15.94%).

Addendum 1 to the Summer Flounder, Scup, and Black Sea Bass FMP explains the quota management procedure for management and distribution of the coastwide quota that was approved in September 1996 and implemented as a coastwide TAC in 1997. Addendum 1 provides that the annual coastwide quota is divided among three periods; winter I (Jan-Apr), summer (May-Oct), and winter II (Nov-Dec). During the winter periods, the quota is available coastwide and is restricted through the implementation of trip limits. Addendum 1 includes a state-by-state quota system that is in effect during the summer period. In the state-by-state system, quotas are distributed to the states based on their percentage share of commercial landings for the period May-October, 1983-1992. As such, North Carolina's commercial allocation is only 0.02% of the summer period. In June 1997, the Commonwealth of Massachusetts filed a lawsuit against the Secretary of Commerce stating that the historical data used to determine the quota shares underestimate the commercial landings of scup. However, the resulting court order does not affect the state-by-state quota allocations that are included in Addendum 1.

Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP, which established revised overfishing definitions (F_{max} serving as a proxy for F_{msy}), identification and description of essential fish habitat, and defined the framework adjustment process, was approved by the Commission in October 1998. Amendment 12 to the Summer Flounder Scup and Black Sea Bass FMP established a biomass threshold for scup (2.77 kg/tow) based on the maximum value of the 3-year moving average of the NEFSC spring bottom trawl survey index of spawning stock biomass.

Amendment 13 to the Summer Flounder, Scup and Black Sea Bass FMP (August 2002), implemented in 2003, established a coastwide quota, established F_{max} (0.26) as the overfishing threshold, and developed a fishing mortality rate reduction strategy that included minimum fish

sizes and gear restrictions.

The most recent assessment on scup, completed in 2002 (SAW-35), indicated scup were no longer overfished, but could not be evaluated with respect to overfishing. The 2002 assessment also concluded that although the “relative exploitation rates have declined in recent years, the absolute value of current fishing mortality (F) cannot be determined.” Therefore, no comparison with the F threshold specified in the FMP could be made, and the rebuilding schedule was disapproved.

However, based on the NEFSC Spring Spawning Biomass estimates, the index values for 2004 (0.69 kg/tow) & 2005 (1.32 kg/tow) were below the minimum stock size threshold (2.77 kg/tow), and the stock was considered overfished in 2004 & 2005.

Despite an apparent increase of scup abundance and a decline in relative exploitation rates, the lack of a current assessment led both management authorities to take a precautionary approach in establishing the 2007 TAL for scup. The TAL for 2007 was set at 16.00 million lbs., slightly less than in 2006 (16.27 million lbs.), for a 2007 allocation of 12.48 million lbs. commercial (78 percent) and 3.52 million lbs. recreational (22 percent). Discards in the directed scup fishery together with a lack of recent stock assessment information continue to create uncertainty. Although the stock is currently categorized as overfished, its overfishing status is unknown. The recommended TAL for scup is within the range of long-term potential catches associated with a stock at approximately $\frac{1}{2}$ Bmsy.

In 2002, the board developed Addendum V to the FMP in order to avoid the necessity of developing emergency rules for summer period quota management. This addendum established state shares of the summer period quota based on historical commercial landings from 1983-1992, including landings from Massachusetts added to the NMFS database in 2000. State shares implemented by this addendum will remain in place until the Board takes direct action to change them.

Addendum VII established a state specific management program for the 2002 recreational fishery, and Addendum IX established a state specific management program for the 2003 recreational fishery; both were based on the average landings (number of fish) for 1998-2001. Only Massachusetts through New York were permitted to develop individual management programs. Due to the extremely limited data available, the Board developed specific management measures for the states of New Jersey, Delaware, Maryland, Virginia and North Carolina.

Addendum X allows for any unused quota from the winter I scup fishery to be rolled over into winter II fishery period. It also increases the possession limit by 500 lbs per 500,000 pounds of scup that are rolled over. The addendum also establishes an alternative to the summer period start date such that states can allow for landings of scup by state permit holders beginning on April 15th. If there is a closure prior to April 15th, state permit holders could land and sell scup caught exclusively in state waters to state and federally permitted dealers after April 15th and prior to the Federal opening of the summer period on May 1.

Addendum XIII (August 2004), authorized by Amendment 12, allows for multiple-year specification of TALs for the summer flounder, scup, and/or black sea bass fisheries in any given year for up to three years (Framework 5). However, given the uncertainty associated with the spring survey, TALs have been considered annually, to date.

The Council also approved the development of a framework (2005) to amend the FMP to allow for a rollover of the scup quota from the Winter I period (January-April) to Winter II period (November-December), change the starting date of the summer period (May-October) for scup from May 1 to April 15, and allow the transfer of scup at sea. The Board and Council approved new mesh size requirements. The minimum mesh size for the scup fishery in 2005 will be 5" with a minimum length of 75 meshes from the terminus of the net. For small nets with less than 75 meshes codend, the entire net will be 5". The threshold level used to trigger the new minimum mesh size is 200 lbs from May 1 to October 31.

Shad and River Herring:

The Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan for Shad and River Herring (FMP) was adopted in 1985. In 1994, the Plan Review Team and the Management Board determined that the original FMP was no longer adequate for protecting or restoring the remaining shad and river herring stocks. As a result, Amendment 1 was adopted in October 1998 (completed April 1999). Amendment 1 focuses on American shad regulations and monitoring programs, but also requires States to initiate fishery-dependent monitoring programs for river herring and hickory shad in addition to current fishery-independent programs. Such monitoring programs will seek to improve data collection and stock assessment capabilities. Furthermore, Amendment 1 contains specific measures to control exploitation of American shad populations while maintaining the status quo in other alosine fisheries. The amended goal of the FMP is to protect, enhance, and restore East Coast migratory spawning stocks of American shad, hickory shad, and river herring (collectively alewife and blueback herring) in order to achieve stock restoration and maintain sustainable levels of spawning stock biomass.

In the fall of 1999, the Technical Committee reviewed both state annual reports and fishing recovery plans. After doing so, Technical Addendum 1 to Amendment 1 of the Interstate FMP for Shad and River Herring was created by the Technical Committee and approved by the Management Board. This technical addendum was created to address modifications to the state's fishery-dependent and independent monitoring programs for American shad.

In February 2002, the Plan Review Team and the Technical Committee recommended several changes to both Amendment 1 and Technical Addendum 1. Addendum 1 was developed and included the following: changes the conditions for marking hatchery-reared alosines; clarifies the definition and intent of de minimis status for the American shad fishery; and modifies and clarifies the fishery-independent and dependent monitoring requirements of Technical Addendum 1. These measures went into effect on January 1, 2003.

Although the FMP covers American shad, hickory shad, alewife and blueback herring, limited data for the latter three species make it difficult to determine stock status. A coastwide stock assessment for American shad was conducted in 1997 and is being updated and expected to be

completed in 2007. Upon completion of the American shad stock assessment, the ASMFC plans on beginning a coastwide river herring stock assessment.

Under Amendment 1 (April 1999), fishery-independent and fishery-dependent monitoring programs are now mandatory for American shad. Juvenile abundance index (JAI) surveys, annual spawning stock surveys, and hatchery evaluations are required for states/jurisdictions specified in the fishery management plan. In addition, Amendment 1 recommends that JAIs for other alosine species be reported when possible.

All States are required to calculate mortality and/or survival estimates, and monitor and report data relative to landings, catch, effort, and bycatch. States must submit annual reports including all monitoring and management program requirements, on or before July 1 of each year. In addition, States were required to submit State recovery/fishing plans by July 1, 1999. All States plans to implement Amendment 1 were approved by January 1, 2000.

In addition to the mandatory monitoring requirements stipulated under Amendment 1, some states/jurisdictions continue important research initiatives for these species. For example, Maine, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, and USFWS are actively involved in shad restoration using hatchery-cultured fry and fingerlings.

All state programs must implement commercial and recreational management measures or an alternative program approved by the Management Board. The Board decided to require states to submit in river shad restoration plans for stocks under their jurisdictions. In addition the Board voted to phase out all ocean- intercept fisheries for American shad by 2005. States with a non-directed harvest of American shad in ocean fisheries are allowed bycatch landings that do not exceed 5% of the total landings (pounds) per trip. All states have closed their ocean-intercept fisheries as of January 1, 2005.

For recreational fisheries, the states voted to implement a 10 fish/person/day creel limit for American and hickory shad. In addition DMF has made it unlawful to take shad by any method other than hook- and- line from April 15 through December 31.

Sharks:

In 1989, the five Atlantic Fishery Management Councils asked the Secretary of Commerce to develop a Shark FMP. The Councils were concerned about the late maturity and low fecundity of sharks, the increase in fishing mortality and the possibility of the resource being overfished. In 1993, NMFS implemented the FMP for Sharks of the Atlantic Ocean. The FMP established a fishery management unit (FMU) consisting of 39 frequently caught species of Atlantic sharks, separated into three groups for assessment and regulatory purposes (Large Coastal Sharks (LCS), Small Coastal Shark (SCS) and pelagic sharks). At that time, NMFS identified LCS as overfished and pelagic and SCS as fully fished. NMFS implemented commercial quotas for LCS and established recreational harvest limits for all sharks. Under the rebuilding plan established in the 1993 FMP, the LCS quota was expected to increase every year up to the maximum sustainable yield estimated in the 1992 stock assessment; however, to date this has not happened. The 1999 FMP for Atlantic Tunas, Swordfish and Sharks replaced the existing Atlantic Shark

and Atlantic Swordfish FMPs and established the first FMP for Atlantic Tunas. Management measures related to sharks that changed in the 1999 FMP included: reducing commercial LCS and SCS quotas, reducing recreational retention limits for all sharks, establishing a recreational minimum size limit for all sharks except Atlantic sharpnose, expanding the list of prohibited shark species, implementing limited access in commercial fisheries and establishing new procedures for counting dead discards and state landings of sharks after Federal fishing season closures against Federal quotas. Some of the non-species specific management measures included establishing the threshold levels to determine if a stock is overfished, if overfishing is occurring or if the stock is rebuilt and identifying essential fish habitat (EFH) for all Atlantic tunas, swordfish and sharks.

Results of the 2002 SCS stock assessment indicate that overfishing is occurring on finetooth sharks while the three other species in the SCS complex (Atlantic sharpnose, bonnethead and blacknose) are not overfished and overfishing is not occurring. Results of the 2002 LCS stock assessment indicate that the LCS complex is still overfished and overfishing is occurring. Additionally, this stock assessment found that sandbar sharks are no longer overfished but that overfishing is still occurring and that blacktip sharks are rebuilt and overfishing is not occurring.

In 2003, NMFS amended the measures enacted in the 1999 FMP based on the 2002 LCS and SCS stock assessments, litigation and public comments. Implementing regulations for Amendment 1 to the 1999 FMP were published on December 24, 2003 (68 FR 74746). Management measures enacted in the amendment included: re-aggregating the large coastal stock complex, revising the rebuilding timeframe for LCS, using maximum sustainable yield (MSY) as a basis for setting commercial quotas, eliminating the commercial minimum size restrictions, establishing three regional commercial quotas (Gulf of Mexico, South Atlantic and North Atlantic) for LCS and SCS management units, implementing trimester commercial fishing seasons effective January 1, 2005, adjusting the recreational bag limit, establishing gear restrictions to reduce bycatch and bycatch mortality, establishing a time/area closure off the coast of North Carolina effective January 1, 2005, updating some shark EFH identifications, establishing criteria to add or remove species to the prohibited shark list and establishing voice monitoring system (VMS) requirements for bottom longline and gillnet fishermen. As a result of using MSY to establish quotas and implementing a new rebuilding plan, the overall annual landing quota for LCS in 2004 was established at 1,017 mt dressed weight (dw). The overall annual landings quota for SCS was established at 454 mt dw.

The regional quotas, which were established in Amendment 1 to the Highly Migratory Species (HMS) FMP for LCS and SCS were intended to improve overall management of the stocks by tailoring quotas to specific regions based on landing information. These quotas were based upon average historical landings (1999-2001) from the canvass and quota monitoring databases. The canvass database provides a near-census of the landings at major dealers in the southeast U.S. (including state landings) and the quota monitoring database collects information from dealers in the South Atlantic and Gulf of Mexico.

On November 30, 2004, NOAA Fisheries issued a final rule (69 FR 69537), which established, among other things, new regional quotas based on updated landings information from 1999-2003. This final rule did not change the overall quotas for LCS and SCS established in

Amendment 1, only the percentages allocated to each of the regions. The updated information was based on several different databases, including the canvass and quota monitoring databases, the Northeast Commercial Fisheries Database (CFDBS) and the snapper grouper logbook. The new regional quotas and trimester seasons for the commercial Atlantic shark fishery became effective January 1, 2005.

Currently, NMFS proposes to improve coordination of the conservation and management of the domestic fisheries for Atlantic swordfish, tunas, sharks and billfish by consolidating the management of all HMS into one FMP. The proposed consolidated FMP is intended to augment and combine the 1999 Atlantic Tunas, Swordfish and Sharks FMP, Amendment 1 to the 1999 Atlantic Tunas, Swordfish and Shark FMP, the 1988 Billfish FMP and Amendment 1 to the Billfish FMP into a single fishery management plan. It currently is in Final Rule and will be effective November 1, 2006.

The Atlantic States Marine Fisheries Commission is developing an Interstate Fishery Management Plan for Atlantic Coastal Sharks.

Spanish Mackerel:

The South Atlantic Fisheries Management Council manages the king and Spanish mackerel fisheries through the Coastal Migratory Pelagics FMP. The Secretary of Commerce approved the original plan in February 1983. The plan consists of 15 regulatory amendments. For Spanish mackerel, the FMP implements a quota for both recreational and commercial fisheries, minimum size limit, recreational bag limit, fishing permits for commercial and charter/headboats, and an allocation between recreational and commercial user groups. The current allocation of the annual total allowable catch is 45% recreational and 55% commercial. The fishing year is March 1 to February 28/29. Quotas and bag limits have been increasing over the last several years due to the strong recovery of the stock. A complementary ASMFC plan was adopted for state waters in 1990 and complements the actions of the SAFMC FMP. Current regulations include 12" fork length minimum size limit, 15 fish per day recreational bag limit, and a 3,500-pound commercial trip limit. States may also implement more restrictive regulations if they so choose. The FMP benchmarks are Biomass threshold = $(1-M) \cdot B_{msy}$ and Fishing mortality threshold = $F_{30\%SPR}$.

Spiny Dogfish:

The FMP for spiny dogfish in federal waters was jointly adopted by the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) with an effective date of May 1, 2000. The joint Spiny Dogfish Committee and the Spiny Dogfish Industry Advisory Panel oversees development of the plan. The FMP for spiny dogfish in state waters was adopted by the Atlantic States Marine Fisheries Commission (ASMFC) in November 2002 and went into effect on May 1, 2003. The ASMFC Spiny Dogfish Management Board, Technical Committee, Plan Development Team, and Advisory Panel oversee the development of the plan. The plans were developed to rebuild the spiny dogfish stock that was declared overfished by the National Marine Fisheries Service (NMFS) in 1998.

The plans use annual quotas and trip limits based on the most recent stock status data to allow a non-directed commercial fishery during the rebuilding period. An annual fishing season beginning May 1 divided into six-month periods (May 1-October 31 and November 1- April 30) is also in place. In addition, dealer permits with weekly reporting requirements are mandatory for the purchase of spiny dogfish. Each state must also report weekly landings to the NMFS. In November 2005, the ASMFC approved Addendum I to the Spiny Dogfish FMP, which allows for multiple-year specification of total allowable landings (TALs) for spiny dogfish. Within any given year, TALs for spiny dogfish can be specified for up to five years. Annual review of updated fishery and stock information is required. Specified measures will be evaluated based on the most current scientific information available then adjusted if needed. In January 2006, the NMFS implemented Framework 1 to the federal FMP that also would allow for multiple-year specifications in federal waters, but without the requirement for annual review.

The 2006 Northeast Regional Stock Assessment Workshop (SAW-43) determined that the spiny dogfish stock is not currently overfished, with an estimated stock size of mature females of 106,000 mt. For 2005, the fishing mortality on fully recruited females was estimated at 0.128, which is below the updated threshold fishing mortality rate of $F=0.39$. However, recruitment estimates from 1997 to 2003 represent the seven lowest values in the entire series. It is expected that the biomass of mature female dogfish will continue to increase through 2008 and 2009 then decline due to the low number of recruits born during 1997-2003. The mature female biomass should then begin to rebound again by 2015.

Spot:

Spot is one of several South Atlantic species that the Atlantic States Marine Fisheries Commission (ASMFC) manages cooperatively with the South Atlantic Fishery Management Council. Spot support important commercial and recreational fisheries in the South Atlantic, particularly from the Chesapeake Bay southward. A Fishery Management Plan (FMP) for spot was adopted by the ASMFC in 1987. Unlike many of the Commission's FMPs, the plan does not contain mandatory management measures but instead provides recommendations for states to follow in order to reach the plan's goals.

Annual FMP reviews have been conducted by a Spot Plan Review Team (PRT) and presented to the South Atlantic Board. The latest review (2006) by a team of fishery managers from North Carolina, Virginia, and Maryland recommended the development of an amended spot FMP with objective compliance criteria. This recommendation was made based on concerns over the continuing declines in commercial landings. The Board felt that it would be unwise to invest time and money into developing compliance criteria before examining the present available data. The PRT is in the process of analyzing these data and will report to the Board in the spring of 2007.

Spotted Seatrout:

The Atlantic States Marine Fisheries Commission (ASMFC) adopted the Fishery Management Plan (FMP) for spotted seatrout in 1984. The states of Florida through Maryland have a declared interest in the Commission's FMP for Spotted seatrout. Amendment 1 to this FMP was

approved by the ISFMP Policy Board in November 1991. This amendment added an objective of maintaining a spawning potential ratio (SPR) of at least 20% to minimize the possibility of recruitment failure.

The goal of Amendment 1 to the spotted seatrout FMP is “to perpetuate the spotted seatrout resource in fishable abundance throughout its range and generate the greatest possible economic and social benefits from its harvest and utilization overtime.” The plan’s objectives are to: 1) attain over time optimum yield; 2) maintain a spawning potential ratio of at least 20% to minimize the possibility of recruitment failure; 3) promote conservation of the stocks in order to reduce the inter-annual variation in availability and increase yield per recruit; 4) promote the collection of economic, social, and biological data required to effectively monitor and assess management efforts relative to the overall goal; 5) promote research that improves understanding of the biology and fisheries of spotted seatrout; 6) promote harmonious use of the resource among various components of the fishery through coordination of management efforts among the various political entities having jurisdiction over the spotted seatrout resource; and 7) promote determination and adoption of standard of environmental quality and provide habitat protection necessary for the maximum natural protection of spotted seatrout. The FMP was last reviewed and approved by the Spotted Seatrout Plan Review Team in October 2006. It has been the opinion of the Commission’s original Advisory Committee and Spotted Seatrout Plan Review Team that the goal and objectives of the plan are still valid, but that full implementation of the FMP has not been achieved across the entire management unit.

A formal coastwide stock assessment of spotted seatrout has not been conducted and is impractical considering the biology and population dynamics of this species. The 1984 FMP recognized the lack of biological and fisheries data necessary for stock assessment and effective management of the resource. Spotted seatrout life history information and fisheries data have generally been localized and conducted at different levels of population abundance. Detailed information on incidental bycatch, release mortality, and the size and age structure of releases has become a more important component of assessments of the condition of spotted seatrout populations.

Florida, South Carolina and Georgia have conducted virtual population analyses on local stocks of spotted seatrout. Florida’s spotted seatrout management plan has a goal of a 35% spawning potential ratio (SPR). The most recent (2001) estimates of transitional SPR for Florida are 57% in the northeast region north of Volusia County and 33% in the southeast region from Volusia County south (Murphy 2003). The analysis conducted in South Carolina indicated that fishing mortality needed to be reduced approximately 20% to meet the plan objective of a 20% SPR. The 2002 Georgia assessment was conducted, but results were highly questionable due to substantial data limitations. North Carolina’s stock assessment on local spotted seatrout stock is scheduled to be completed in conjunction with the state’s FMP process in 2007. All states in the management unit (MD-FL) have implemented a minimum size limit of 12 inches total length.

Summer Flounder:

The ASMFC and the MAFMC manage summer flounder, scup and black sea bass under a joint FMP. The management unit includes summer flounder in US waters in the western Atlantic Ocean from the southern border of North Carolina to the US-Canadian border. The original ASMFC FMP for summer flounder was approved in 1982. The objectives of the FMP are to: 1) reduce fishing mortality of summer flounder to assure overfishing does not occur; 2) reduce fishing mortality of immature summer flounder to increase spawning stock biomass; 3) improve yield from the fishery; 4) promote compatible management regulations between state and federal jurisdictions; 5) promote uniform and effective enforcement of regulations; and 6) minimize regulations to achieve the stated objectives. The MAFMC FMP for summer flounder, prepared in 1988, established a 13" minimum size limit. Since then, thirteen amendments have been approved and two more are currently under development. Commercial fishery management measures include an annual quota with state-by-state allocations, a 14 inch minimum size limit, a federal (EEZ) moratorium on entry into the commercial fishery, vessel and dealer permitting and reporting requirements, and a minimum mesh size of 5 ½ inch stretched diamond mesh between the wings and the cod end of the trawls with an exemption program. Recreational fishery measures include an annual quota with state-by-state allocations, size limits, possession limits and seasonal closures. The states from Massachusetts to North Carolina establish state specific seasons, size and possession limits through conservation equivalency to manage their recreational summer flounder fisheries. An ASMFC Plan Review Team, Technical Monitoring Committee and Management Board and the MAFMC Demersal Species Committee are actively working on this plan. A joint ASMFC-MAFMC Technical Monitoring Committee that is comprised of staff members from state agencies, MAFMC, ASMFC, NMFS and USFWS, provides annual framework adjustment advice.

The summer flounder stock is currently under a rebuilding plan that requires the stock to be rebuilt by January 1, 2013. The summer flounder stock assessment is updated annually. An update and peer review of the summer flounder stock assessment in September 2006 resulted in revised fishing mortality and spawning stock biomass estimates and biological reference points. The peer review found it more appropriate to use spawning stock biomass (SSB) and average recruitment as biological reference points instead of total stock biomass and median recruitment. The updated threshold fishing mortality is now 0.280, the threshold spawning stock biomass is 98.6 million pounds, the target spawning stock biomass is 197.1 million pounds and the average recruitment is estimated at 37 million fish. The 2007 annual stock assessment update determined the stock is overfished and overfishing is occurring compared to the biological reference points. The fishing mortality (F) rate for 2006 is estimated at 0.35, which is above the threshold F rate of 0.28, but significantly lower than the F rate estimate of 1.32 in 1994. The 2006 SSB estimate is 93 million pounds, which is below the threshold SSB of 98.6 million pounds. Retrospective analysis shows a tendency to overestimate the spawning stock biomass and underestimate the fishing mortality rate in the most recent years in the stock assessment, which has delayed stock rebuilding.

Tautog:

Management of the North Carolina tautog stock falls under the jurisdiction of the Atlantic States Marine Fisheries Commission (ASMFC) tautog FMP. The management unit for tautog includes the territorial waters of Massachusetts to North Carolina and seaward. The ASMFC tautog FMP

was adopted in 1996. Addendum I of the FMP (May 1997) required all states reach the interim fishing mortality target ($F=0.24$) and a 14" size limit by April 1, 1998. Further, it required all states achieve the F target of 0.15 by April 1, 2000. Addendum I also adjusted the compliance schedule and added de minimis specifications. Addendum II (November 1999) extended the compliance schedule such that states had until April 2, 2002 to meet the target overfishing definition. Addendum III (February 2002) required the states to develop and implement plans to reduce F in their respective recreational fisheries by April 1, 2003 and revised the plan F target to $F_{40\%}$ Spawning Stock Biomass (SSB). Tautog is currently managed by a coastwide target fishing mortality rate set to ensure at least 40% of the virgin spawning potential ratio is maintained, and is currently estimated to be $F=0.29$. No limit reference points or biomass-based reference points have been established. The commercial and recreational fisheries are controlled by minimum size limits, possession limits, gear restrictions, and seasonal closures.

The Atlantic coastwide tautog FMP is overseen by the ASMFC Tautog Management Board. Technical duties are the responsibility of the Tautog Technical Committee and the Stock Assessment Subcommittee. North Carolina declared no interest in tautog, is not represented on the Board, and currently does not have representation on the technical committee. States must request de minimis status each year and requests for de minimis status are reviewed by the Tautog Plan Review Team as part of the annual FMP review process. De minimis status has been extended to North Carolina since the inception of the coastwide FMP. Specific management measures required of de minimis states include: commercial and recreational 14" minimum size limits, degradable fastener provisions for pots, and commercial regulations consistent with recreational requirements.

When the FMP was developed there were inadequate data to prepare recreational bag and season requirements for North Carolina. No recreational measures have since been urged by the ASMFC, nor adopted by North Carolina. Degradable pot fasteners are currently enforced in the state. North Carolina has not implemented size limits, yet this has not affected the extension of de minimis status to North Carolina.

The Management Board had previously expressed concern that fishermen from northern states might attempt to land fish in North Carolina to avoid more restrictive regulations. Prior to 2001, DMF had considered rules that provided protection against expansion in recreational landings. Since most recreational trips in North Carolina land one or two tautog, a five fish possession limit for commercial and recreational fisheries was proposed as a reasonable alternative that would prevent excessive expansion of the fishery, but not an undue burden (J. Carmichael; DMF staff). To date, however, no rules have been considered necessary by ASMFC.

In 2003, North Carolina petitioned the Tautog Management Board to be removed from the management unit, given the very small fishery landings observed in the state. Commercial tautog landings have averaged 673 lbs from 1994 to 2005. Recreational landings have averaged 16,149 lbs from 2000 to 2005, yet are poorly estimated by the MRFSS with very high yearly PSE (41-69). The request to be completely removed from the management unit was denied, and it was deemed more appropriate for North Carolina to be granted de minimis status, effective since 2004.

The first tautog assessment was performed in 1995. A coastwide VPA (ADAPT) was performed but rejected during the SAW/SARC peer review. Nonetheless an F estimate from that assessment was incorporated into the initial FMP (ASMFC 1996). At that time, it was estimated that the coastwide stock of tautog was overfished and that overfishing was occurring.

A second benchmark coastwide stock assessment was performed in 1999, based upon a VPA run and corroborative tag based survival estimates, peer reviewed and accepted through the SAW/SARC process. The 1999 assessment determined that the terminal year F value had dropped to 0.29, close to the interim FMP target of 0.24, but well above the final plan target (F=M=0.15).

A 2002 stock assessment update found that recreational catch rates had returned to levels prior to the minimum size increase and that F had increased above the overfishing definition (0.41). This required reductions in recreational harvest (only), starting in 2003, in an attempt to return F to the FMP target value. The target was revised to FSSB 40% (0.29) by Addendum III (ASMFC 2002), based upon updated recruitment and weight at age parameters, as well as a desire to adopt a target with more management flexibility. In 2003 and 2004, states operated under the new suite of regulations and an assessment was scheduled to determine if those regulations achieved the desired result of reducing recreational catch and lowering F back to or below target levels.

The peer-reviewed stock assessment, available in 2006, was the first full assessment since 1999, although a stock update by the Technical Committee was conducted in 2002. The Commission benchmark stock assessments are normally updated every four or five years, but the tautog assessment was delayed one year to allow incorporation of two years of harvest information since the latest management changes. The Stock Assessment Team utilized a coastwide Virtual Population Analyses (VPA) to estimate trends in abundance, spawning stock biomass, recruitment and fishing mortality. The review Panel accepted the overall VPA, and concluded that the coastwide assessment provided the best available scientific foundation for management.

The 2006 peer-reviewed stock assessment report indicates the tautog resource continues to be at low biomass levels. Since the mid-1980s tautog has undergone a substantial decrease in biomass and remains at a low level of abundance. Total stock biomass has been stable since 1999. Since the plan does not define a specific biomass target, it cannot be determined if the population is overfished. With the 2003 fishing mortality rate (F=0.2999) marginally exceeding the plan target of 0.29, the stock assessment concluded that overfishing is occurring.

The 2007 Addendum V proposes removing North Carolina from the tautog management plan. North Carolina's annual commercial and recreational harvest have made up less than 1% of the coastwide fishery meeting the requirement for de minimis status since the Atlantic States Marine Fisheries Commission began regulating tautog in 1996. Because North Carolina tautog fishery is insignificant, the State requested their removal from the plan to relieve them from all burdens that accompany their inclusion. Future expansion in the North Carolina fishery is highly unlikely considering North Carolina's low latitude in the context of tautog's distinctively temperate, geographical distribution. The ASMFC declined to support this request so North Carolina will remain in the management unit with de minimis status.

Weakfish:

The weakfish program functions under the Commission's Interstate Fisheries Management Program (ISFMP), with immediate oversight provided by the Weakfish Management Board (Board). The FMP for weakfish was adopted in 1985 by the ASMFC. The FMP has been amended in 1991, 1994, 1996 and most recently by Amendment 4 in 2002. Amendment #3, adopted in June 1996, was designed to provide an expanded age structure, and to restore fish to their full geographical extent. As a result, specific restrictions were required by the various states. For NC these included; BRD requirements for shrimp trawls, 12 inch commercial minimum size limit for all but estuarine pound net and long haul seine fisheries (seasonal 10 inch size limit), minimum mesh sizes for gill nets and trawls, 150 pound bycatch allowance in non-directed fisheries, and recreational bag and size limits. In addition, North Carolina was required to reduce harvest by 35%. The harvest reduction was achieved by closing the area south of Cape Hatteras to flynets.

When Amendment 4 was adopted in November 2002, states were allowed to choose from a suite of recreational size and creel limit options (currently 7 fish at 12 inches) and were required to maintain the commercial measures developed under Amendment 3, with the one exception of increasing the commercial bycatch allowance from 150 to 300 pounds. While, management measures implemented through Amendment 3 and continued through Amendment #4 resulted in an initial positive response to rebuilding the overfished stocks of weakfish along the Atlantic coast, the most recent stock assessment indicates that spawning stock biomass has declined rapidly following 1999 and is at the lowest level in the time series. This decline in biomass has been reflected in landings along the Atlantic coast where they are currently at historic lows. While this latest stock assessment was not upheld by a peer review panel in 2006, the Board accepted five conclusions (supported by significant evidence) for management use: 1) the stock is declining; 2) total mortality is increasing; 3) there is not much evidence of overfishing; 4) something other than fishing mortality is causing the decline in the stock; and 5) there is a strong chance that regulating the fishery will not, in itself, reverse stock decline.

The Commission's Weakfish Management Board approved Addendum II to Amendment 4 to the FMP in 2007. The Addendum considered several options to restrict and/or constrain harvest but also recognized that further restriction may do little to recover the weakfish stocks if fishing mortality was indeed not the culprit in the decline. Under the Addendum, the states of Massachusetts through North Carolina will be required to implement a six fish creel limit at their current size limit for the recreational fishery. The Addendum establishes a coastwide commercial landings limit of approximately 3.7 million pounds (based on the average landings for 2000-2004). The Addendum also reduces the allowable bycatch limit from 300 pounds to 150 pounds per day or trip. These management measures will be re-evaluated when either the coastwide commercial landings equal or exceed 80% of the commercial landings limit or any single state's landings exceed its five-year mean by more than 25% in any single year.

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Black Sea Bass (south of Cape Hatteras):

The South Atlantic Fisheries Management Council manages black sea bass south of Cape Hatteras, North Carolina. The Secretary of Commerce implemented the original SAFMC Snapper Grouper Fishery Management Plan, which includes black sea bass, on August 31, 1983. The FMP established an 8" total length minimum size for black sea bass. It also required that fish traps have a degradable panel or degradable door fasteners. Fish traps were also required to have a mesh size no smaller than 1" x 2" or 1.5" hexagonal. Since 1983, 12 amendments have been developed dealing with various aspects of this fishery. Amendment 4, approved on August 26, 1991, became effective on January 1, 1992. Among many items, it prohibited the use of fish traps in South Atlantic federal waters with the exception of black sea bass traps when used north of Cape Canaveral, Florida. A permit, gear, and vessel and trap identifications were required to fish with black sea bass traps. Implementation of Amendment 4 resulted in a prohibition on black sea bass fishermen making multi-gear trips and retaining other species, which resulted in large, unintended economic losses. The SAFMC subsequently requested emergency regulations on July 8, 1992 to modify the definition of black sea bass pot, allow multi-gear trips, and allow retention of incidentally caught fish. These regulations became effective on August 31, 1992 and were extended on November 30, 1992. The final rule was published on July 6, 1993 with an effective date of July 6, 1993.

On February 6, 1997, the SAFMC requested establishment of a control date for the black sea bass pot fishery; April 23, 1997 is the control date for this fishery. Amendment 9, which was based on the 1996 stock assessment, was implemented on February 24, 1999. This Amendment increased the minimum total size to 10" and established a 20 fish bag limit for recreational/non-permitted fishermen. It also further defined black sea bass pot requirements. 1) A minimum unobstructed escape vent opening of 1-1/8 x 5-3/4" for rectangular vents, 1.75" x 1.75" for square vents (inside measure), or 2" diameter for circular vents is required. Also, pots require a minimum of 2 vents that must be located on opposite vertical panels of the pot. In effect, this excludes the top or bottom as locations for the escape vents. 2) A pot is required to have on at least one side, excluding top or bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge or 0.041" diameter or galvanic timed release mechanisms no letter grade higher than 'J'.

Amendment 10 was approved on June 3, 1999. This Amendment identified essential fish habitat for species in the snapper grouper complex and established essential fish habitat-habitat areas of particular concern for this management unit.

A stock assessment, conducted in 1996, was based on data through 1995. Black sea bass was considered to be overfished with static SPR of 26%. The average fishing mortality rate (F) for 1991-1995 was 0.95. The SAFMC concluded that measures in Amendment 9 (increased size limits and bag limits) were sufficient to rebuild black sea bass above the overfished level (SPR 30%).

A recent SEDAR stock assessment conducted in 2003 concluded that black sea bass is overfished and experiencing overfishing. A 62% reduction in catch is needed to end overfishing.

SAFMC approved Amendment 13C which was effective October 23, 2006. The following changes have occurred. For commercial fishermen, the fishing year changes from a calendar year to June 1 through May 31. The annual commercial quota in year 1 (2007) is 477,000 lbs gutted weight, in year 2 (2008), it is reduced to 423,000 lbs, and in year 3 (2009) to 309,000 lbs.

When the quota is met all pots must be removed from the water. The entire back panel of the pot must contain mesh that is at least 2 inches between sides. Recreational fishermen also had the fishing year changed to June 1 through May 31. Minimum size was increased to 11 inches TL until May 31, 2007 and then increased to 12 inches thereafter. The daily bag limit was reduced to 15 fish. The annual recreational allowance is 633,000 lbs in year 1 (2007), 560,000 lbs in year 2 (2008), and 409,000 lbs in year 3 (2009). SAFMC is currently considering alternative rebuilding schedules and strategies for black sea bass in Amendment 15.

Dolphin and Wahoo:

The goal of the Dolphin/Wahoo FMP, is to take a precautionary and risk averse approach to manage these species and maintain the current level of harvest and prevent any new or expanding fisheries that compromise the current allocation between commercial and recreational fishermen. The FMP establishes the management unit for dolphin and wahoo as that portion of the stocks found in the exclusive economic zone (EEZ) along the U.S. Atlantic coast from Maine through the east coast of Florida.

The FMP for dolphin/wahoo was approved in June 2004. The following actions were approved by the Secretary of Commerce :

Dolphin:

- 10 fish recreational bag limit
- 60 fish recreational boat limit
- No recreational sale except by properly licensed charter boats
- 13% or 1.5 million pound commercial allocation
- Vessel, operator, and dealer permit requirements

Wahoo:

- 2 fish recreational bag limit
- No recreational sale
- 500 pound commercial trip limit
- Vessel, operator, and dealer permit requirements

The MFC implemented rules in state waters in September 2005 that conform to these SAFMC measures.

It is important to note that this FMP may be modified by framework actions if the allocation or commercial harvest compromises the historical recreational fishery or results in conflict. For example, if the commercial harvest exceeds the 1.5 million pound quota and exceeds the 13% allocation, framework actions may be used to reduce the commercial harvest. However, the commercial harvest might exceed 1.5 million pounds during an extraordinary year but not exceed the 13%. This dual cap/allocation provides a safeguard but also allows the commercial fishery to capitalize on a strong year class of dolphin, within limits.

King Mackerel:

The South Atlantic Fisheries Management Council manages the king and Spanish mackerel fisheries through the Coastal Migratory Pelagics FMP. The Secretary of Commerce approved the original plan in February 1983. The plan consists of 15 regulatory amendments. For king mackerel, the FMP implements a quota for both recreational and commercial fisheries, minimum size limit, recreational bag limit, fishing permits for commercial and charter/headboats, and an allocation between recreational and commercial user groups. The current allocation of the annual total allowable catch is 62.9% recreational and 37.1% commercial. The fishing year is March 1 to February 28/29. Quotas and bag limits have been increasing over the last several years due to the strong recovery of the stock. Current regulations include 24" fork length minimum size limit, 3 fish per day recreational bag limit, and a 3,500-pound commercial trip limit. Amendment 15 (2004) established an indefinite commercial permit moratorium.

Reef Fishes:

The South Atlantic Fisheries Management Council manages the snapper-grouper fishery. There are 73 species in the snapper-grouper complex. The original SAFMC Snapper Grouper Fishery Management Plan was implemented by the Secretary of Commerce on August 31, 1983. The FMP established minimum sizes for five species. Additional harvest and gear limitations were also in the original plan. Since 1983, 12 amendments have been developed dealing with various aspects of this fishery. Amendment 1 which was implemented January 12, 1989, prohibited use of trawl gear to harvest fish in the snapper-grouper fishery. Amendment 2, approved on October 10, 1990, prohibited the harvest of jewfish in the EEZ. Amendment 3 established a management program for the recently developed wreckfish fishery and was effective January 31, 1991. Amendment 4, approved on August 26, 1991, became effective on January 1, 1992. It prohibited 1) use of fish traps except for black sea bass pots when used north of Cape Canaveral, FL, 2) use of entanglement nets, 3) use of longline gear inside 50 fathoms, 4) use of bottom longlines for wreckfish, and 5) use of powerheads and bangsticks in designated Special Management Zones off SC. The SAFMC subsequently requested emergency regulations on July 8, 1992 to modify the definition of black sea bass pot, allow multi-gear trips, and allow retention of incidentally caught fish. These regulations became effective on August 31, 1992 and were extended on November 30, 1992. The final rule was published on July 6, 1993 with an effective date of July 6, 1993.

Amendment 5 established Individual Transferable Quota management program for the wreckfish fishery, effective April 6, 1992. Amendment 6, effective June 27, 1994, dealt with the deepwater species and commercial trip limits, recreational bag limits, and an experimental closed area off FL. Amendment 7, effective January 23, 1995, established minimum size limits on two species, required dealer, charter and headboat federal permits, made allowances for multi-gear trips off NC, and a few other minor items. On February 6, 1997, the SAFMC requested establishment of a control date for the black sea bass pot fishery; April 23, 1997 is the control date for this fishery. Amendment 8 established a program to limit initial eligibility for participation in the snapper-grouper fishery and became effective in December 1998. Amendment 9, which was

based on the 1996 stock assessment, was implemented on February 24, 1999. This amendment increased minimum size limits on five species, created new bag limits, and limited longline catches to certain species. This was effective February 24, 1999.

Amendment 10 which addressed the habitat requirements of the Magnuson-Stevens Act was approved on June 3, 1999. This Amendment identified essential fish habitat for species in the snapper grouper complex and established essential fish habitat-habitat areas of particular concern for this management unit. Amendment 11 addressed non-habitat requirements (MSY, OY, rebuilding timeframe, overfishing evaluation) of the Magnuson-Stevens Act. It was approved on May 19, 1999, but it has not yet been published. Amendment 12, which deals with red porgy trip limits, bag limits, and, size limits became effective August 29, 2000. Amendment 13A extended regulations within the Oculina Experimental Area off the east coast of Florida and was effective April 26, 2004. Amendment 13C addressed overfishing in snowy grouper, golden tilefish, black sea bass, and vermilion snapper and allowed for a modest increase in the harvest of red porgy. It became effective October 23, 2006.

The MFC has selectively implemented many of these measures by rule in state waters. With the dissension surrounding the adoption of Amendment 13C, the MFC has not revised the North Carolina rule to conform. These measures are being implemented by suspending the existing rule and using proclamation authority till each scheduled meeting of the MFC.

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Monkfish:

The New England Fishery Management Council (NEFMC) and Mid-Atlantic Fishery Management Council (MAFMC) adopted a rebuilding plan for monkfish in 1999, subsequently modified and amended to include an annual measure of the status of the stocks and adjustment to management measures as needed to maintain a 10-year rebuilding schedule. In April 2005, the councils adopted Amendment 2 to the Monkfish FMP, which included measures to address essential fish habitat (EFH) and bycatch issues, as well as other issues raised during the public scoping process. Amendment 2 did not modify the stock-rebuilding program established in Framework 2.

Amendment 2 implemented the following measures: a new limited access permit for qualified vessels fishing south of 38°20' N latitude; an offshore monkfish fishery in the Southern Fishery Management Area (SFMA); a maximum roller-gear disc diameter of 6 inches in the SFMA; closure of two deep-sea canyon areas to all gears when fishing under monkfish days at sea (DAS); establishment of a research DAS set-aside program and a DAS exemption program; a North Atlantic Fisheries Organization Regulated Area Exemptions Program; adjustments to the monkfish incidental catch limits (from 50 lb/trip to 50 lb/day not to exceed 150 lb/trip or, for qualified vessels, no more than 5 percent of the total weight of fish on board, not to exceed 450 lb tail weight); a decrease in the monkfish minimum size in the SFMA (from 14 inches to 11 inches tail length or 21 inches to 17 inches total length) to correspond to the size limits in the Northern Fishery Management Area (NFMA); removal of the 20-day block requirement; and new additions to the list of actions that can be taken under the framework adjustment process

contained in the FMP.

Framework Adjustment 2 to the FMP, which became effective on May 1, 2003, implemented a method for setting the annual target total allowable catches (TACs). This method is based upon the relationship between the 3-year running average of NMFS's fall trawl survey biomass index and established biomass index targets. Once the annual target TACs are established, trip limits and/or days at sea (DAS) are adjusted accordingly.

Table B-1 NC Compliance measures for finfish species or species groups managed under the jurisdiction of the ASMFC or Federal Councils, NC IJ FMP 2007.

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
American eel	ASMFC	FMP 1999 Add #1 2006 (maintain current restrictions)	3J .0301	(f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1 inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.	No-Daily reports required via a DMF letter to fishers		3M .0512 Conditional Proclamation *see note at end of Table
			3M .0510	Unlawful to: (1) Possess, sell or take eels less than six inches in length; and (2) Possess more than 50 eels per person per day for recreational purposes			
Atlantic croaker	ASMFC	FMP 1997 Amen #1 2005	No comply rules		No		3M .0512 Conditional Proclamation
Atlantic menhaden	ASMFC	FMP 1981 Add #1-#3 2004-2006	No comply rules		No		3M .0512 Conditional Proclamation
Atlantic Striped Bass (Ocean)	ASMFC	FMP 1981 Amen #6 2003	3M .0201 General	(a) Striped bass is defined as striped bass (<i>Morone saxatilis</i>) and its hybrids taken in coastal and joint waters. (b) Hook-and-line fishing equipment is not commercial fishing	Various annuallyFF -30-07	effective at 12:01 A.M., Sunday, April 1, 2007, the season for the harvest of striped bass with ocean trawls in the Atlantic Ocean waters of North Carolina SHALL OPEN. The following restrictions	3M .0204 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				<p>equipment in the striped bass fishery. It is unlawful to sell or purchase striped bass taken by hook-and-line. Striped bass taken legally with hook-and-line may be possessed and transported.</p> <p>(c) It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).</p> <p>(d) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except:</p> <p>(1) during the open season in internal coastal waters established in 15A NCAC 03M .0202;</p> <p>(2) during any open season established for the Atlantic Ocean in 15A NCAC 03M .0204; or</p> <p>(3) during any open season of another state without possession of the following:</p> <p>(A) A bill of lading as described in 15A NCAC 03I .0114;</p> <p>(B) A numbered, state-issued tag from the State of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.</p> <p>(e) The management units and recreational fishery management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.</p>		<p>will apply:</p> <p>I. SIZE LIMIT</p> <p>No person may possess, transport, buy, sell, or offer for sale striped bass less than 28 inches total length taken with ocean trawls from the Atlantic Ocean.</p> <p>II. HARVEST RESTRICTIONS</p> <p>A. No ocean trawl operation, regardless of the number of persons or vessels involved, may land or sell more than 100 striped bass during the harvest period beginning at 12:01 A.M. Sunday, April 1, 2007 and ending at 6:00 P.M., Sunday, April 15, 2007.</p> <p>B. Striped bass may not be transferred from the harvesting vessel to any other vessel during harvesting operations or be transported by any vessel other than the vessel in which they are harvested.</p> <p>III. GEAR RESTRICTIONS</p> <p>A. For purposes of this proclamation, a trawl is defined as a net made of multi-strand nylon consisting</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						of wings, a body and a codend. B. No gill nets may be possessed on board a vessel used in the taking or landing of striped bass. Plus permits, tags, reporting, etc	
Atlantic Striped Bass (Ocean)	ASMFC		3M .0204 Season, Size, Etc. Ocean	(a) It is unlawful to possess striped bass taken from the Atlantic Ocean less than the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Management Plan for striped bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Management Plan. (b) It is unlawful to buy, sell, transport, or possess striped bass from the Atlantic Ocean by any means except that the Fisheries Director may establish an open season at any time, and is further empowered to impose any or all of the following restrictions: (1) Specify number of days, (2) Specify areas, (3) Specify means and methods which may be employed in the taking, (4) Specify time period, (5) Limit the quantity, both commercially and recreationally, and (6) Provide for biological			3M .0204 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				sampling of fish harvested.			
Atlantic striped bass (internal, ASMA, RRMA)	ASMFC	FMP 1981 Amen #6 2003	3M.0202 Season, Size, Etc. Internal	<p>(a) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass in internal coastal waters:</p> <p>(1) Specify season or seasons: (A) for recreational purposes; (B) for commercial fishing operations from October 1 through April 30,</p> <p>(2) Specify areas, (3) Specify quantity, (4) Specify means/methods, (5) Specify size, but the minimum size specified shall not be less than 18 inches total length, and Require submission of statistical and biological data.</p> <p>Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.</p> <p>(b) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass by hook-and-line or for recreational purposes in internal coastal waters in order to comply with the management requirements incorporated in the North Carolina Estuarine Striped Bass Plan:</p> <p>(1) Specify quantity, but shall not exceed possession of more than three fish in any one day, and</p>	Several annually FF-35-07 rec.	<p>effective at 8:01 P.M., Monday, April 30, 2007 the season for striped bass taken for recreational purposes in the Albemarle Sound Management Area shall open with the following restrictions:</p> <p>AREA DESCRIPTION:</p> <p>The Albemarle Sound Management Area as defined in Marine Fisheries Rule 15A NCAC 3R .0201 (a), excluding Inland fishing waters.</p> <p>II. SEASON, MEANS AND METHODS:</p> <p>A. Striped bass may be taken for recreational purposes seven days a week during the open season.</p> <p>B. Recreational Commercial Gear License (RCGL) gill net(s) with a mesh length of 5 ½ inches and larger are required to be equipped with floats that do not exceed 2 inches in diameter and 6 inches in length, with float placement no less than 10 yards apart. The net(s) shall be set so as to fish on the bottom not to exceed a vertical fishing height of 48 inches. The net(s) shall be attended when used from one</p>	3M.0202 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				(2) Specify size, but the minimum size specified shall not be less than 18 inches total length.	FF-33-07	<p>hour after sunrise through one hour before sunset.</p> <p>C. The recreational season for striped bass in the Albemarle Sound Management Area shall close at 8:00 P.M., Sunday, May 6, 2007, unless closed earlier by a proclamation.</p> <p>III. SIZE AND CREEL LIMITS:</p> <p>A. No person shall take or possess striped bass less than 18 inches total length taken for recreational purposes from the Albemarle Sound Management Area.</p> <p>B. No person, including RCGL holders, shall take or possess more than three (3) striped bass taken in any one day for recreational purposes from the Albemarle Sound Management Area.</p> <p>effective at 8:01 P.M., Saturday, April 14, 2007, the harvest of striped bass with COMMERCIAL FISHING OPERATIONS IN THE ALBEMARLE SOUND MANAGEMENT AREA WILL OPEN and the following provisions shall apply:</p> <p>I. AREA DESCRIPTION</p> <p>Albemarle Sound Management</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
					M-5-07	<p>Area as described in Marine Fisheries Rule 15A NCAC 3R .0201 (a), excluding Inland fishing waters.</p> <p>II. SIZE AND HARVEST RESTRICTIONS:</p> <p>A. It is unlawful to take, possess, transport, buy, sell, or offer for sale striped bass less than 18 inches total length taken by commercial fishing operations from the Albemarle Sound Management Area.</p> <p>B. It is unlawful for an individual or commercial fishing operation regardless of the number of persons or vessels involved, to possess, land, sell or offer for sale more than five (5) striped bass, unless taken in conjunction with other commercially important finfish. Striped bass shall be limited to 50% by weight, of the combined daily harvest, not to exceed 5 fish per day, per Standard Commercial Fishing License (SCFL) holder. The daily harvest limit of 5 striped bass shall not be exceeded, regardless of where taken from internal waters, unless the fish are taken in accordance with II. C. below.</p> <p>C. It is unlawful for any operation</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>consisting of more than one SCFL holder to be in possession of more than two daily harvest limits. A SCFL holder must accompany each single harvest limit until the time of sale to a dealer possessing a valid 2006/2007 STRIPED BASS DEALER PERMIT validated for the Albemarle Sound Management Area.</p> <p>Plus permits, tags, etc.</p> <p>effective at 12:01 A.M., Sunday, April 15, 2007 the following provisions shall apply to the use of gill nets in the ALBEMARLE SOUND MANAGEMENT AREA.</p> <p>I. AREA DESCRIPTION: The Albemarle Sound Management Area as described in Marine Fisheries Rule 15A NCAC 3R .0201 (a) excluding Inland Fishing Waters.</p> <p>II. COMMERCIAL NET RESTRICTIONS: Only gill nets meeting the specified mesh lengths shall be used in the following areas identified below. A fishing operation, regardless of the number of vessels or persons involved, shall not use more than the lengths of gill nets specified</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>for the following areas:</p> <p>Albemarle Sound, Currituck Sound, Croatan Sound and Roanoke Sound and their Joint Water Tributaries</p> <p>A. Gill nets with a mesh length of 3 ¼ inches shall not exceed 800 yards in length.....</p> <p>Gill nets with a mesh length of 5 1/2 inches and larger that are equipped with floats that do not exceed 2 inches in diameter and 6 inches in length placed a minimum of 10 yards apart, not to exceed 11 floats per 100 yards of net. Nets must not exceed 3,000 yards in length and must be set so as to fish on the bottom not to exceed a vertical height of 48 inches.</p> <p>Gill nets with a mesh length of 5 1/2 inches and larger not meeting the criteria in Section II. D. for floats are required to be equipped with tie downs spaced no farther apart than 30 feet restricting the vertical distance between the top and bottom lines to 48 inches or less. Nets must not exceed 3000 yards in length and must be set so as to fish on the bottom not to exceed a vertical height of 48</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>inches.</p> <p>F. No gill nets may be used in the area southwest of a line from Black Walnut Point 35° 59 .3833' N- 76° 41 .0060' W, running 138° (M) to a point 35° 56 .3333'N- 76° 36 .0333' W at the mouth of Mackey's Creek, including Roanoke, Cashie, Middle and Eastmost rivers.</p>	
Atlantic Sturgeon	ASMFC	FMP 1990 Amen # 1 1998 Add #2 2004	3M .0508	It is unlawful to possess sturgeon in North Carolina.	No		3M .0512 Conditional Proclamation
Black sea bass-North & Black sea bass-South	ASMFC & MAFMC SAFMC	FMP ?? Amen #13 ?? ??	3M. 0506	(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission: (1) Specify size; (2) Specify seasons; (3) Specify areas;	FF-40-07	<p>Effective at 12:01 A.M., Tuesday, May 1, 2007, the following restrictions shall apply to the commercial black sea bass fishery north of Cape Hatteras (35° 15.3'N. Latitude):</p> <p>SIZE LIMIT It is unlawful to possess black sea bass less than 11 inches total length north of Cape Hatteras. Total length shall be measured along the lateral midline from the tip of the nose to the tip tail, excluding the caudal fin filament.</p> <p>HARVEST LIMITS</p>	3M.0506 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				(4) Specify quantity; (5) Specify means/methods; and (6) Require submission of statistical and biological data.		<p>During the period beginning at 12:01 A.M., Tuesday, May 1, 2007 and ending at 6:00 P.M., Tuesday, May 15, 2007, no commercial trawl, fish pot or hook and line fishing operation, regardless of the number of people involved, may have total landings of more than 15,000 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras. The Atlantic Ocean black sea bass fishery will close immediately after the Director issues a public notice that the quota of black sea bass has been landed from the Atlantic Ocean north of Cape Hatteras, or at 6:00 P.M., May 15, 2007, whichever occurs first.</p> <p>B. During any closed season, vessels may land up to 100 pounds of black sea bass per trip taken from the Atlantic Ocean.</p> <p>III. GEAR RESTRICTIONS</p> <p>FISH TRAPS/POTS: Black sea bass pots or traps must conform with the Federal rule requirements for escape vents specified in 50 CFR 648.144 (b)(2) and for degradable fasteners specified in 50 CFR 648.144 (b)(3)(i), (ii) and (iii). (See Section IV.H).</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>IV. PERMITS</p> <p>A. Finfish dealers may not buy more than 100 pounds of black sea bass caught north of Cape Hatteras per day per commercial fishing operation unless the dealer has a valid 2007 Black Sea Bass – North of Cape Hatteras Dealer Permit from the North Carolina Division of Marine Fisheries. Permits will be issued only to those licensed fish dealers holding a valid license as authorized in G.S. 113-169.3. Dealers must abide by all conditions of the 2007 Black Sea Bass-North of Cape Hatteras Dealer Permit as set out in Proclamation FF-53-2006, dated November 21, 2006.</p> <p>B. Dealers possessing a 2007 Black Sea Bass – North of Cape Hatteras Dealer Permit shall report daily by noon through FAX transmittal (252-726-3903) to the Division of Marine Fisheries black sea bass landings from the Atlantic Ocean for the previous day.</p>	
			3M. 0506 (Pots)	(s) Fish Traps/Pots: (1) It is unlawful to use or have on board a vessel fish traps for taking snappers and groupers except sea bass pots as allowed in			

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				<p>Subparagraph (2) of this Paragraph. (2) Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 646.2, openings and degradable fasteners specified in 50 CFR Part 646.22(c)(2)(i), and escape vents and degradable materials as specified in 50 CFR Part 622.40 (b)(3)(i) and rules published in 50 CFR pertaining to sea bass north of Cape Hatteras (35° 15' N Latitude). Copies of these rules are available via the Federal Register posted on the Internet at www.gpoaccess.gov/fr and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.</p>			
Black sea bass-South	SAFMC		3M .0506	<p>(b) Black sea bass, south of Cape Hatteras (35° 15.0321'): (1) It is unlawful to possess black sea bass less than ten inches total length. (2) It is unlawful to take or possess more than 20 black sea bass per person per day without a valid Federal Commercial Snapper-Grouper permit.</p>	FF-39-07	<p>Effective at 12:01 A.M., Sunday, April 29, 2007, the following restrictions will apply to the taking of snapper-grouper from the Atlantic Ocean for recreational and commercial purposes: I. SIZE AND POSSESSION LIMITS A. The size and possession limits of N.C. Fisheries Rules for Coastal Waters 15A NCAC 3M .0506 that were suspended in <u>Proclamation FF-19-2007, dated February 23, 2007</u> are replaced</p>	G.S 113-221.1 Suspend Rule

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						with the following provisions in accordance with proclamation authority in the same Rule: 1. It is unlawful to possess black sea bass south of Cape Hatteras (35 ° 15.0321' N) less than eleven inches total length when taken for recreational purposes. It is unlawful to take or possess more than 15 black sea bass per person per day south of Cape Hatteras without a valid Federal Commercial Snapper-Grouper permit. Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 622.40 and rules published in 50 CFR pertaining to sea bass north of Cape Hatteras (35° 15'N Latitude).	
Bluefish	ASMFC & MAFMC	FMP ?? Amen #1 2000	3M .0511	(a) In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Bluefish developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions for bluefish: (1) Taken by a commercial	FF-26-03	effective at 12:01 A.M., Tuesday, April 1, 2003, the following change will apply to the taking of bluefish for recreational purposes: Proclamation FF-42-2001, dated June 19, 2001, is RESCINDED. That proclamation specified the possession limit of 15 bluefish per person per day for recreational purposes. GENERAL INFORMATION	3M .0511 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				fishing operation: (A) Specify size; (B) Specify seasons; (C) Specify areas; (D) Specify quantity; (E) Specify means/methods; and (F) Require submission of statistical and biological data. (2) Taken for recreational purposes: (A) Specify size; (B) Specify quantity. (b) It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.		C) The recreational possession limit for blue fish (15 fish per person per day) now appears in N.C. Marine Fisheries Rule 15A NCAC 3M .0511. Also included in this rule is a provision which states, "Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length." D) This proclamation rescinds Proclamation FF-42-2001, dated June 19, 2001.	
Dolphin & Wahoo	SAFMC	FMP 2004	3M .0515 dolphin	(a) It is unlawful to possess more than 10 dolphin per person per day taken by hook and line for recreational purposes except charter vessels with a valid National Marine Fisheries Service Coastal Migratory Pelagic Permit and licensed by the U.S. Coast Guard to carry six or less passengers for hire, may possess a maximum of 60 dolphin per day regardless of the number of people on board. (b) Vessels, including charterboats when fishing with three or less persons (including captain and mate) on board, with a valid Standard or Retired Standard	No		G.S 113-221.1 Suspend Rule 3M .0512 Conditional Proclamation

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				Commercial Fishing License or a Land or Sell License, may possess more than 60 dolphin per day.			
			3M .0517 wahoo	(a) It is unlawful to possess more than two wahoo per person per day taken by hook and line for recreational purposes. (b) It is unlawful to take or possess more than two wahoo per person per day, or sell wahoo without a Federal Commercial Dolphin/Wahoo permit and either a Standard Commercial Fishing License, Retired Standard Commercial Fishing License, or a Land or Sell License. (c) It is unlawful to possess aboard or land more than 500 pounds of wahoo per trip in a commercial fishing operation	No		G.S 113-221.1 Suspend Rule 3M .0512 Conditional Proclamation
Mackerel, king	SAFMC	FMP 1983 Amen 1-13 2004	3M .0301	(b) King mackerel: (1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for king mackerel: (A) Specify areas. (B) Specify seasons. (C) Specify quantity. (D) Specify means/methods. (E) Specify size. (2) It is unlawful to possess king mackerel less than 24 inches fork length. (3) It is unlawful to possess more than three king mackerel per person per day taken for recreational			3M .0301 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				<p>purposes.</p> <p>(4) It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:</p> <p>(A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or</p> <p>(B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.</p> <p>(5) It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).</p> <p>(c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the king mackerel and Spanish mackerel possession limits established in Subparagraphs (a)(3) and (b)(3) of this Rule when fishing with more than three persons (including the captain and mate) on board.</p> <p>(d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500</p>			

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				pounds of Spanish or king mackerel, in the aggregate, in any one day.			
Mackerel, Spanish	SAFMC & ASMFC	FMP 1983 Amen 1-13 2004	3M .0301	<p>(a) Spanish Mackerel:</p> <p>(1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for Spanish mackerel:</p> <p>(A) Specify areas.</p> <p>(B) Specify seasons.</p> <p>(C) Specify quantity.</p> <p>(D) Specify means/methods.</p> <p>(E) Specify size.</p> <p>(2) It is unlawful to possess Spanish mackerel less than 12 inches fork length.</p> <p>(3) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.</p> <p>It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.</p> <p>c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the king mackerel and Spanish mackerel possession limits established in Subparagraphs (a)(3) and (b)(3) of this Rule when fishing with more</p>			3M .0301 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				than three persons (including the captain and mate) on board. (d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.			
Monkfish	MAFMC	FMP ?? Amen #2 2005	No Comply Rules		(Turtle related)		3M .0512 Conditional
Red Drum	ASMFC	FMP ?? Amen #2 2002 (maintain current restrictions)	3M .0501	(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum: (1) Specify areas. (2) Specify seasons. (3) Specify quantity. (4) Specify means/methods. (5) Specify size. (b) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device. (c) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length. (d) It is unlawful to possess more than one red drum per person per day taken-by hook-and-line or for recreational purposes. (e) The annual commercial harvest limit (September 1 through August 31) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director	FF-47-01	effective at 6:00 P.M. Thursday, September 6, 2001, the following restrictions will apply to the taking of red drum (channel bass) in a commercial fishing operation: I. HARVEST LIMIT A. It is unlawful to possess more than seven (7) red drum per day taken in a commercial fishing operation, regardless of the number of individuals or vessels involved. B. Subject to I. A. above, no person may possess red drum incidental to any commercial fishing operation unless the weight of the combined catch of all other finfish (excluding menhaden) exceeds the weight of the red drum retained.	3M .0501 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.			
Reef fish	SAFMC	FMP?? Amen 1-15	3M .0506	<p>(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:</p> <ol style="list-style-type: none"> (1) Specify size; (2) Specify seasons; (3) Specify areas; (4) Specify quantity; (5) Specify means/methods; and (6) Require submission of statistical and biological data. <p>The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.gpoaccess.gov/fr and at the</p>	FF-39-07	<p>Effective at 12:01 A.M., Sunday, April 29, 2007, the following restrictions will apply to the taking of snapper-grouper from the Atlantic Ocean for recreational and commercial purposes:</p> <p>I. SIZE AND POSSESSION LIMITS</p> <p>A. The size and possession limits of N.C. Fisheries Rules for Coastal Waters 15A NCAC 3M .0506 that were suspended in Proclamation FF-19-2007, dated February 23, 2007 are replaced with the following provisions in accordance with proclamation authority in the same Rule:</p> <p>1....</p> <p>It is unlawful to possess vermillion snapper (beeliner) less than 12 inches total length.</p> <p>It is unlawful to possess more than three red porgy per person per day without a valid Federal Commercial Snapper-Grouper permit.</p> <p>It is unlawful to land more than 120 individual red porgy from May 1 through December 31 in a commercial fishing operation.</p> <p>B. The following is to be added to</p>	<p>G.S 113-221.1 Suspend Rule</p> <p>3M .0506 Explicit</p>

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost. <u>See rule for species size and creels</u>		Marine Fisheries Rule 15A NCAC 3M .0506 (p)(2) Combined Bag Limits: It is unlawful to possess more than five grouper without a Federal Commercial Snapper-Grouper permit of which: No more than one per person per day may be a snowy grouper; No more than one per person per day may be a golden tilefish	
			3M. 0516 (Cobia)	(a) It is unlawful to possess cobia less than 33 inches fork length. (b) It is unlawful to possess more than two cobia per person per day.			
Scup	ASMFC & MAFMC	FMP 1996 Add #1 1996	3M .0514	In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Scup developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions in the scup fishery: (1) Specify size; (2) Specify seasons; (3) Specify areas; (4) Specify quantity; (5) Specify means/methods; and (6) Require submission of statistical and biological data.	FF-31-07	effective at 9:00 A.M., Sunday, April 1, 2007, the following restrictions will apply to the commercial scup fishery in coastal waters including the Atlantic Ocean north of Cape Hatteras (35° 15' N. Latitude): I. SIZE AND HARVEST LIMITS No person may take, possess, buy, sell or offer for sale scup less than 9 inches in length. No person may possess, sell or offer for sale more than 30,000 pounds of scup during each of the following two week periods when taken with commercial fishing equipment or for commercial	3M .0514 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>purposes during the Winter I Harvest Period.</p> <p>1. From 9:00 A.M., April 1 through 9:00 P.M., April 15, 2007. From 9:01 A.M., April 16 through 9:00 P.M., April 30, 2007.</p> <p>II. TRAWL MESH REQUIREMENTS</p> <p>The minimum mesh size for the commercial scup fishery will be 5 inches stretched mesh with a minimum length of 75 meshes from the terminus of the net. For small nets with less than 75 mesh codends, the entire net will be 5 inches.</p>	
Shad & River herring	ASMFC	FMP 1985 Amen1 1999 Add #1 2003 (maintain current restrictions)	3M .0513	<p>(a) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the blueback herring, alewife, American shad and hickory shad fisheries:</p> <p>(1) Specify size; (2) Specify season; (3) Specify area; (4) Specify quantity; (5) Specify means/methods; and (6) Require submission of statistical and biological data. e) It is unlawful to take American</p>	FF-71-06	<p>effective at 12:01 A.M., Monday, January 1, 2007, the following restrictions shall apply to the harvest of American and hickory shad:</p> <p>I. SEASON</p> <p>The American shad harvest season in the internal Coastal and Joint fishing waters of the state, <u>excluding the Atlantic Ocean</u>, will open. The hickory shad harvest season in the Atlantic Ocean, Internal Coastal and Joint fishing waters of the state will open. The</p>	3M .0513 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				shad and hickory shad by any method except hook-and-line from April 15 through December 31. (f) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.		season for the commercial harvest of American shad and hickory shad shall close at 12:00 midnight, Saturday, April 14, 2007. II. RECREATIONAL HARVEST LIMITS It is unlawful to possess more than ten (10) American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.	
Sharks coastal	ASMFC (pending)& NMFS	FMP 1999 Amen #1 2003	3M .0505	The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the shark fishery: (1) Specify size; (2) Specify seasons; (3) Specify areas; (4) Specify quantity; (5) Specify means/methods; and (6) Require submission of statistical and biological data.	FF-24-04	Effective at 6:00 A.M. Monday, March 8, 2004, the harvest of sharks taken in state waters is restricted as follows: I. COMMERCIAL HARVEST RESTRICTIONS: A. Seasons: The possession of sharks taken for commercial purposes may only occur during an open portion of the seasons established by this proclamation. Open seasons in state waters shall be the same as open seasons established by the National Marine Fisheries Service (NMFS) for federal waters. These open seasons are dependent on established quotas. The fishing seasons are defined herein as:.....	3M .0505 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>B. Limits</p> <p>1. No person may possess more than one (1) shark per vessel per day during an open season taken in internal coastal waters or in the Atlantic Ocean within three nautical miles of shore by any gear for commercial purposes.</p> <p>2. The one shark possession may be made up of a shark from any of the three following shark categories: Large Coastal, Small Coastal, and Pelagic (see General Information Section). If NMFS closes any of these categories, then possession or sale of sharks from that category is prohibited.</p> <p>3. The possession of all sharks, except for tiger (<i>Galeocerdo cuvieri</i>), thresher (<i>Alopias vulpinus</i>), bigeye thresher (<i>Alopias superciliosus</i>), shortfin mako (<i>Isurus oxyrinchus</i>), and hammerhead species, genus (<i>Sphyrna</i>), greater than 84 inches fork length is prohibited.</p> <p>4. The shark species, Atlantic sharpnose (<i>Rhizoprionodon terraenovae</i>) is exempt from these harvest and size restrictions.</p> <p>5. Smooth dogfish (<i>Mustelis canis</i>) are exempt from the season, harvest and size restrictions listed above.</p> <p>6. Spiny dogfish (<i>Squalus acanthias</i>) seasons and harvest limits are established under the</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>Mid-Atlantic/New England Council Spiny Dogfish Fishery Management Plan or the ASMFC Spiny Dogfish FMP.</p> <p>7. All sharks not retained must be returned to the water in a manner to ensure the highest likelihood of survival.</p> <p>8. In accordance with Federal Rule 50 CFR §635.30 (c) (2), a person may eviscerate (dress) and remove the head and fins from a shark at sea, but must retain the fins with the dressed carcass and land all fins and corresponding carcasses from the vessel at the same point of landing. This applies to Atlantic sharpnose sharks.</p> <p>9. Smooth dogfish may be dressed at sea and are exempt from the requirement to retain and land fins and corresponding carcasses together as specified in I.B.8 above.</p> <p>II. RECREATIONAL PURPOSES AND HOOK-AND-LINE POSSESSION LIMITS:</p> <p>A. The possession of any shark species, excluding smooth dogfish (<i>Mustelus canis</i>), and spiny dogfish (<i>Squalus acanthias</i>), is limited to one (1) shark per vessel per day, for vessels other than charter and head boat vessels for hire.</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>B. The possession limit for charter and head boat vessels, excluding smooth dogfish (<i>Mustelus canis</i>), and spiny dogfish (<i>Squalus acanthias</i>), is one (1) shark per person per day excluding captain and crew. The sale of a charter or head boat vessel possession limit is prohibited. The catch cannot be transferred from individual anglers to the captain or crew.</p> <p>C. If no vessel is involved, the possession limit is one (1) shark per person per day.</p> <p>D. All sharks except Atlantic sharpnose (<i>Rhizoprionodon terraenovae</i>), smooth dogfish, and spiny dogfish must be a minimum size of 54 inches fork length.</p> <p>E. The possession of all sharks, except for tiger (<i>Galeocerdo cuvieri</i>), thresher (<i>Alopias vulpinus</i>), bigeye thresher (<i>Alopias superciliosus</i>), shortfin mako (<i>Isurus oxyrinchus</i>) and hammerhead species, genus (<i>Sphyrna</i>), greater than 84 inches fork length is prohibited.</p> <p>F. Any shark retained must have head, tail, and fins intact with the carcass through the point of landing.</p> <p>G. All sharks not retained must be returned to the water in a manner to ensure the highest likelihood of survival.</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>III. PROHIBITED SPECIES:</p> <p>Possession of the following shark species is prohibited in state waters: basking (<i>Cetorhinus maximus</i>), white (<i>Carcharodon carcharias</i>), sand tiger (<i>Odontaspis taurus</i>) and whale (<i>Rhincodon typus</i>).</p>	
Spiny Dogfish	ASMFC & MAFMC	FMP 2003 Add #1 2005	3M .0505	<p>The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the shark fishery:</p> <ol style="list-style-type: none"> (1) Specify size; (2) Specify seasons; (3) Specify areas; (4) Specify quantity; (5) Specify means/methods; <p>and</p> <ol style="list-style-type: none"> (6) Require submission of statistical and biological data. 	FF-8-07	<p>effective at 6:00 A.M., Monday, February 5, 2007 the following restrictions will apply to the harvest of spiny dogfish in the Atlantic Ocean waters of North Carolina.</p> <p>I. HARVEST PERIODS</p> <p>The fishing year for spiny dogfish is divided into two periods: Quota Period I and Quota Period II. Period I is from May 1 through October 1 each year, and Period II is from November 1 through April 30.</p> <p>II. TRIP LIMITS</p> <p>No commercial fishing operation, regardless of the number of people involved, may possess more than 4,000 pounds per trip of spiny dogfish during this portion of Period II.</p>	3M .0505 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
Spot	ASMFC	FMP 1987	No comply rules		No		3M .0512 Conditional Proclamation
Spotted seatrout	ASMFC	FMP 1984 Amen #1 1991	No comply rules		No		3M .0512 Conditional Proclamation
Summer flounder	ASMFC & MAFMC	FMP 1982 Amen 1-15	3M .0503	<p>(a) It is unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation <u>See Rule for license to land flounder, and gear restrictions</u></p> <p>(j) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.</p> <p>(k) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the flounder fishery:</p> <ol style="list-style-type: none"> (1) Specify size; (2) Specify season; (3) Specify area; (4) Specify quantity; (5) Specify means/methods; <p>and</p> <ol style="list-style-type: none"> (6) Require submission of statistical and biological data. 	<p>FF-9-07 rec ocean</p> <p>FF-10-07 set internal at 14 comm & rec</p> <p>FF-24-07</p>	<p>effective at 12:01 A.M., Thursday, February 8, 2007, the following restrictions will apply to the taking of flounder for recreational purposes from the Atlantic Ocean:</p> <p>I. A. MINIMUM SIZE LIMIT</p> <p>No person may possess flounder <u>less than 14½ inches</u> total length taken from the Atlantic Ocean for recreational purposes.</p> <p>POSSESSION LIMIT</p> <p>It is unlawful to possess more than eight flounder taken in the Atlantic Ocean for recreational purposes per person per day or per trip if a trip occurs on more than one calendar day. The possession limit shall apply to flounder taken in the Atlantic Ocean by all gears, including gigs, if possession is for a recreational purpose.</p> <p>effective at 12:01 A.M., Friday, March 2, 2007, the following restrictions shall apply to the</p>	<p>3M .0503 Explicit</p> <p>G.S 113-221.1 Suspend Rule</p>

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>commercial flounder fishery:</p> <p>I. HARVEST LIMITS</p> <p>During the period beginning at 12:01 A.M., Friday, March 2, 2007 and ending at 6:00 P.M., Friday, March 16, 2007, no commercial fishing operation, regardless of the number of people involved, may have total landings of more than 10,000 pounds of flounder taken from the Atlantic Ocean. These operations require a valid License to Land Flounder from the Atlantic Ocean. The Atlantic Ocean flounder fishery will close immediately after the Director issues a public notice that the spring quota of flounder has been landed from the Atlantic Ocean, or at 6:00 P.M., March 16, 2007, whichever occurs first.</p> <p>Plus permits, reporting</p>	
Tautog	ASMFC	FMP 1996 Add 1-3	No Comply rules				3M .0512 Conditional Proclamation
Weakfish	ASMFC	FMP 1985 Amen 1-4 Add 1	3M .0504	(b) Weakfish (gray trout). (1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of weakfish by commercial fishing operations: (A) Specify areas.	FF-24-06	<p>effective at 12:00 Noon, Friday, March 17, 2006, the following restrictions will apply to the commercial weakfish fishery:</p> <p>I. COMMERCIAL FISHING</p>	3M .0504 Explicit

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
				(B) Specify seasons. (C) Specify quantity. (D) Specify means/methods. (E) Specify size, but the minimum size shall not be greater than 12 inches total length. (2) The Fisheries Director may, by proclamation, in order to comply with or utilize conservation equivalency to comply with the Atlantic States Marine Fisheries Commission Weakfish Management Plan, impose any or all of the following restrictions on the taking of weakfish by hook-and-line or for recreational purposes: (A) Specify quantity. (B) Specify size.		OPERATIONS, EXCLUDING HOOK-AND-LINE, SIZE LIMITS: A. No person may take, possess, transport, buy, sell, or offer for sale weakfish less than 12 inches total length in state waters or within 200 miles of shore in the Atlantic Ocean except as provided in I.(B) below. B. From April 1 through November 15, weakfish 10 inches total length or more may lawfully be taken in North Carolina internal waters by use of long haul seines or pound nets only and possessed, transported, bought, sold, or offered for sale. GEAR RESTRICTIONS: A. GILL NETS: No person may possess aboard or land from, any vessel using or having on board a gill net with a mesh length less than 2 7/8 inches stretched mesh, more than 300 pounds of weakfish during any one day or on any trip, whichever is longer, in state waters or within 200 miles of the shore in the Atlantic Ocean. B. FLYNETS:	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	
						<p>No person may possess aboard or land from any vessel using a flynet more than 300 pounds of weakfish during any one day or trip, whichever is longer, in state waters or within 200 miles of the shore in the Atlantic Ocean, unless all flynets on board meet the following requirements:.....</p> <p>C. For commercial fishing operations operating with gill nets and flynets that do not meet the requirements of II. (A) and (B) above, weakfish may be taken as bycatch incidental to those gill net and flynet operations provided that the weight of the weakfish shall not exceed 50% of the total weight of the combined catch up to 300 pounds of weakfish.</p> <p>D. SHRIMP/CRAB TRAWLS:No person may possess more than 150 pounds of weakfish (12 inches or more in total length) taken with a shrimp or crab trawl. The weight of the weakfish shall not exceed 50% of the total weight of the combined catch up to 150 pounds of weakfish. This limit does not apply to a Recreational Commercial Gear License shrimp trawl.</p>	

Species	Federal	Federal Plan, Amendments or Addendum	State Actions to Implement Compliance Requirements				Comply Venue Authority
			Rule(s)	Measures	Proc(s) Example	Measures	

* Broad proclamation authority is given in rule 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS: In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans, the Fisheries Director may, by proclamation, suspend the minimum size and harvest limits established by the Marine Fisheries Commission, and implement different minimum size and harvest limits. Proclamations issued under this Section shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221(e1). *History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4; Eff. March 1, 1996. Note G.S. 113-221(e1) was repealed in 2003.*

Also rule 03O .0506 SPECIAL PERMIT REQUIRED FOR SPECIFIC MANAGEMENT PURPOSES is used for compliance actions and it states
The Fisheries Director may, by proclamation, require individuals taking marine and estuarine resources regulated by the Marine Fisheries Commission, to obtain a special permit.

APPENDIX C STATE CONTACTS

The following individuals currently(2009) serve as North Carolina representatives on the various Councils, Commissions, Technical Committees, and Advisory Committees that pertain to the various plans included in this FMP.

Atlantic States Marine Fisheries Commission

The ASMFC policy making body is represented by the Fisheries Director (Louis B. Daniel, III), a Legislative Appointee (Representative William Wainwright) and Governor Appointee (Willard Cole). The following are DMF staff and citizen advisors currently working on individual FMPs and are subject to change.

American Eel	DMF – Katy West Citizen advisors – Rob Hutchinson, Marius Bouw
Atlantic Croaker	DMF – Katy West Citizen advisors - Norm Bradford, Brian Shepard
Atlantic Menhaden	DMF - Trish Murphey Citizen advisors - Jule Wheatley, Jeff DeBlieu
Atlantic Striped Bass	DMF - Charlton Godwin Citizen advisors – Riley Williams, Leland Heath III
Atlantic Sturgeon	DMF – Mike Loeffler Citizen advisors - none
Black Sea Bass (N)	DMF - Red Munden, Beth Burns Citizen advisors – James Craddock, Jimmy Ruhle (alt), Frank Folb
Bluefish	DMF - Red Munden, Beth Burns Citizen advisors - Bob Eakes, Bill Foster
Red Drum	DMF - Lee Paramore Citizen advisors - Norm Bradford, Dave Dietzler, Eugene Ballance
Scup	DMF - Red Munden Citizen advisors - James Craddock, Jimmy Ruhle (alt), Frank Folb
Shad & River Herring	DMF - Sara Winslow Citizen advisors - Billy Farmer, Lee Wynn

Sharks DMF – Clark Gray
Citizen advisors - Dewey Hemilright

Spiny Dogfish DMF - Red Munden, Clark Gray
Citizen advisors - Chris Hickman, Eddie Newman

Spot DMF – Kevin Brown
Citizen advisors – No AP

Spotted Seatrout DMF - Beth Burns
Citizen advisors – No AP

Summer Flounder DMF - Red Munden, Chris Batsavage
Citizen advisors - Sherrill Styron, Frank Folb, James Craddock, Jimmy Ruhle (alt)

Tautog DMF – Beth Bruns
Citizen advisors - None

Weakfish DMF - Lee Paramore
Citizen advisors - Leslie Daniels, Billy Farmer, Bill Mandulak

South Atlantic Fishery Management Council

Voting members on the South Atlantic Council from North Carolina include Louis Daniel or his designee, Rita Merritt (appointed), and Mac Currin (appointed). The following are the other DMF staff and citizen advisors currently working on individual FMPs and are subject to change.

Dolphin/Wahoo DMF - John Schoolfield
Citizen advisors - Paul Dunn, Joe Shute, Dewey Hemilright, Harris Huddle, Jeff Jugan

King Mackerel DMF - Randy Gregory
Citizen advisors - Paul Dunn, Jodie Gay, Andy High, Dick Brame

Spanish Mackerel DMF - Randy Gregory
Citizen advisors - Carl Snow, Kurt Fickling, Rom Whitaker

Reef Fishes & Black Sea Bass DMF – Chip Collier
Citizen advisors - Tom Burgess, Danny Hooks, Jeff Oden, Charlie Adams

Mid-Atlantic Fishery Management Council

Voting members on the mid-Atlantic Council from North Carolina include Red Munden (DMF Director's designee), Jule Wheatley (appointed), and Dennis Spitsbergen (appointed). The following are the other DMF staff and citizen advisors currently working on individual FMPs and are subject to change.

Monkfish

DMF – Red Munden

Citizen advisors - Chris Hickman

APPENDIX D PROPOSED RULE CHANGES

RULES FOR IJA FMP June 2008

I. ISSUE

Review of current MFC rules to determine if they provide the most efficient and effective means of complying with federal Council and ASMFC requirements adopted by reference in the North Carolina Interjurisdictional Fisheries Management Plan (IJA FMP).

II. ORIGINATION

The Division's PDT for the IJA FMP

III. BACKGROUND

The IJA FMP was initially adopted by the MFC in August 2002. It is undergoing the five year review as required by the Fisheries Reform Act (FRA) of 1997. The IJA FMP adopts by reference existing fisheries management plans for 23 finfish species or species group developed by the Atlantic States Marine Fisheries Commission (ASMFC) or federal regional management Councils (South Atlantic and Mid-Atlantic.). A variety of MFC rules and Division proclamations are utilized to put in place management actions in order for the state to be in compliance with the ASMFC and Council plans. The first systematic review of these IJA FMP compliance rules was undertaken by the PDT in 2007 and a number of rules changes are brought forth for consideration.

IV. AUTHORITY

North Carolina General Statutes

113-134. MFC adopt rules implementing subchapter
113-182. Regulation of fishing and fisheries
113-182.1 Fishery Management Plans
113-221.1 Proclamations, emergency review
143B-289.52 MFC powers and duties

V. DISCUSSION

A wide range of approaches are found in the MFC rules that deal with compliance issues. In some cases each rule is very explicit and the text contains all the actions in effect (American eel, Atlantic sturgeon, dolphin, wahoo, cobia). In other instances the rule grants broad proclamation authority to the Fisheries Directors (sharks, scup,) and for most others the rule is a mix of proclamation authority combined with some explicit text. Several species (Atlantic croaker, Atlantic menhaden, monkfish, spot, spotted seatrout, and tautog) have no MFC compliance rules at all.

A single rule, 03M .0512 (compliance with fishery management plans), allows for the suspension of only existing size or harvest limits by proclamation and the implementation of different size or harvest limits by proclamation. Actions taken under this rule are in effect till and subject to review at the next MFC meeting. The Division is proposing to modify the text of this rule to include a correction to a General Statute reference [GS 113-221(e1) was repealed in 2003] and to broaden the types of actions that may be implemented by proclamation. The Director's proclamation authority to comply with Council or ASMFC plans would be maintained and provide for subsequent approval, cancellation, or modification by the MFC. Rule 03O .0506 (special permit required for specific management purposes) is often utilized to implement the more administrative measures for compliance such as quota monitoring and reporting requirements. No changes are recommended in this rule.

Also the existing text in certain species specific rules that confers proclamation authority should be deleted, in order to consistently use the broader authority provided by the proposed modified rule 03M .0512. In this way any conflict with the species rules that may have different parameters for the utilization of proclamation authority can be avoided. The following species rules will not be modified because the existing proclamation authority in these rules is needed to implement state management actions, often associated with a state FMP: 03M .0202 – striped bass season, size and harvest limit: internal coastal waters; and 03M.0503 – flounder.

VI. PROPOSED RULE(S)

MODIFY SUBCHAPTER 3M - FINFISH

SECTION .0200 – STRIPED BASS

15A NCAC 03M .0201 GENERAL is proposed for amendment as follows:

15A NCAC 03M .0201 GENERAL

- (a) Striped bass is defined as striped bass (*Morone saxatilis*) and its hybrids taken in coastal and joint waters.
- (b) Hook-and-line fishing equipment is not commercial fishing equipment in the striped bass fishery. It is unlawful to sell or purchase striped bass taken by hook-and-line. Striped bass taken legally with hook-and-line may be possessed and transported.
- (c) It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).
- (d) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass ~~except:~~ except during any:
 - (1) ~~during the open striped bass season in established for internal coastal waters established in 15A NCAC 03M .0202; waters;~~
 - (2) ~~during any open striped bass season established for the Atlantic Ocean in 15A NCAC 03M .0204; Ocean;~~ or
 - (3) ~~during any open striped bass season of another state without possession of the following:~~
 - (A) A bill of lading as described in 15A NCAC 03I .0114;
 - (B) A numbered, state-issued tag from the State of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.
- (e) The management units and recreational fishery management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

Authority G.S. 113-134; 113-182; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. March 1, 1994; September 1, 1991;

Temporary Amendment Eff. May 1, 2000;

Amended Eff. October 1, 2004; April 1, 2001.

15A NCAC 03M .0204 SEASON, SIZE AND HARVEST LIMIT: ATLANTIC OCEAN is proposed for amendment as follows:

15A NCAC 03M .0204 SEASON, SIZE AND HARVEST LIMIT: ATLANTIC OCEAN

- ~~(a)~~ It is unlawful to possess striped bass taken from the Atlantic Ocean less than the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Management Plan for striped bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Management Plan.
- ~~(b)~~ It is unlawful to buy, sell, transport, or possess striped bass from the Atlantic Ocean by any means ~~except that the Fisheries Director may establish an open season at any time, and is further empowered to impose any or all of the following restrictions:~~
 - ~~(1) Specify number of days,~~
 - ~~(2) Specify areas,~~
 - ~~(3) Specify means and methods which may be employed in the taking,~~
 - ~~(4) Specify time period,~~
 - ~~(5) Limit the quantity, both commercially and recreationally, and~~

~~(6)~~ — Provide for biological sampling of fish harvested.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. October 1, 1996;
Amended Eff. July 1, 1998.

SECTION .0300 – SPANISH AND KING MACKEREL

15A NCAC 03M .0301 SPANISH AND KING MACKEREL is proposed for amendment as follows:

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) Spanish Mackerel:

~~(1)~~ — The Fisheries Director may, by proclamation, impose any or all of the following restrictions for Spanish mackerel:

~~(A)~~ — Specify areas.

~~(B)~~ — Specify seasons.

~~(C)~~ — Specify quantity.

~~(D)~~ — Specify means/methods.

~~(E)~~ — Specify size.

~~(2)~~(1) It is unlawful to possess Spanish mackerel less than 12 inches fork length.

~~(3)~~(2) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.

~~(4)~~(3) It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.

(b) King mackerel:

~~(1)~~ — The Fisheries Director may, by proclamation, impose any or all of the following restrictions for king mackerel:

~~(A)~~ — Specify areas.

~~(B)~~ — Specify seasons.

~~(C)~~ — Specify quantity.

~~(D)~~ — Specify means/methods.

~~(E)~~ — Specify size.

~~(2)~~(1) It is unlawful to possess king mackerel less than 24 inches fork length.

~~(3)~~(2) It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.

~~(4)~~(3) It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:

(A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or

(B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.

~~(5)~~(4) It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).

(c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter Boat and Head Boat) permit must comply with the king mackerel and Spanish mackerel possession limits established in Subparagraphs ~~(a)(3)~~ (a)(2) and ~~(b)(3)~~ (b)(2) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. January 1, 2000; July 1, 1999;
Amended Eff. August 1, 2002; April 1, 2001.

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0501 Red Drum is proposed for amendment: **(RULE ALSO CHANGES VIA DRUM FMP)**

15A NCAC 03M .0501 RED DRUM

~~(a)~~ The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

- ~~(1)~~ Specify areas.
- ~~(2)~~ Specify seasons.
- ~~(3)~~ Specify quantity.
- ~~(4)~~ Specify means/methods.
- ~~(5)~~ Specify size.

~~(b)~~(a) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

~~(c)~~(b) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.

~~(d)~~(c) It is unlawful to possess more than one red drum per person per day taken by hook-and-line or for recreational purposes.

~~(e)~~(d) The annual commercial harvest limit (September 1 through August 31) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. March 1, 1996; October 1, 1992; September 1, 1991;

Temporary Amendment Eff. May 1, 2000; July 1, 1999; October 22, 1998;

Amended Eff. April 1, 2001;

Temporary Amendment Eff. May 1, 2001;

Amended Eff. August 1, 2002.

15A NCAC 03M .0504 TROUT is proposed for amendment:

15A NCAC 03M .0504 TROUT

~~(a)~~ Spotted seatrout (speckled trout).

- (1) It is unlawful to possess spotted seatrout less than 12 inches total length.
- (2) It is unlawful to possess more than 10 spotted seatrout per person per day taken by hook-and-line or for recreational purposes.

~~(b)~~ Weakfish (gray trout).

~~(1)~~ The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of weakfish by commercial fishing operations:

- (A) Specify areas.
- (B) Specify seasons.
- (C) Specify quantity.
- (D) Specify means/methods.
- (E) Specify size, but the minimum size shall not be greater than 12 inches total length.

~~(2)~~ The Fisheries Director may, by proclamation, in order to comply with or utilize conservation equivalency to comply with the Atlantic States Marine Fisheries Commission Weakfish Management Plan, impose any or all of the following restrictions on the taking of weakfish by hook and line or for recreational purposes:

- (A) Specify quantity.
- (B) Specify size.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. March 1, 1996; March 1, 1995; February 1, 1992;

Temporary Amendment Eff. September 9, 1996;

15A NCAC 03M .0505 SHARK is proposed for **REPEAL**:

~~**.0505 SHARK**~~

The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the shark fishery:

- ~~(1) Specify size;~~
- ~~(2) Specify seasons;~~
- ~~(3) Specify areas;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4;

Eff. January 1, 1991;

Amended Eff. September 1, 1991.

15A NCAC 03M .0506 SNAPPER-GROUPER is proposed for amendment as follows:

15A NCAC 03M .0506 SNAPPER-GROUPER COMPLEX

~~(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:~~

- ~~(1) Specify size;~~
- ~~(2) Specify seasons;~~
- ~~(3) Specify areas;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

~~(a) The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.gpoaccess.gov/fr www.safmc.net and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.~~

~~(b) Black sea bass, south of Cape Hatteras (35° 15.0321'):~~

- ~~(1) It is unlawful to possess black sea bass less than ten inches total length.~~
- ~~(2) It is unlawful to take or possess more than 20 black sea bass per person per day without a valid Federal Commercial Snapper-Grouper permit.~~

~~(c) Gag grouper:~~

- ~~(1) It is unlawful to possess gag grouper (gray grouper) less than 24 inches total length.~~
- ~~(2) It is unlawful to possess more than two gag grouper (gray grouper) per person per day without a valid Federal Commercial Snapper-Grouper Permit.~~
- ~~(3) It is unlawful to possess more than two gag grouper (gray grouper) per person per day during the months of March and April.~~
- ~~(4) It is unlawful to sell or purchase gag grouper (gray grouper) taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.~~

~~(d) Black grouper:~~

- ~~(1) It is unlawful to possess black grouper less than 24 inches total length.~~
- ~~(2) It is unlawful to possess more than two black grouper per person per day without a valid Federal Commercial Snapper-Grouper Permit.~~

- (3) — It is unlawful to take or possess more than two black grouper per person per day during the months of March and April.
- (4) — It is unlawful to sell or purchase black grouper taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (e) It is unlawful to possess red grouper less than 20 inches total length.
- (f) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.
- (g) It is unlawful to possess scamp less than 20 inches total length.
- (h) It is unlawful to possess yellowmouth grouper less than 20 inches total length.
- (i) Speckled hind (kitty mitchell) and warsaw grouper:
 - (1) — It is unlawful to sell or purchase speckled hind or warsaw grouper.
 - (2) — It is unlawful to possess more than one speckled hind or one warsaw grouper per vessel per trip.
- (j) Greater amberjack:
 - (1) — For recreational purposes:
 - (A) — It is unlawful to possess greater amberjack less than 28 inches fork length.
 - (B) — It is unlawful to possess more than one greater amberjack per person per day.
 - (2) — It is unlawful to sell or purchase greater amberjack less than 36 inches fork length.
 - (3) — It is unlawful to possess more than one greater amberjack per person per day without a valid Federal Commercial Snapper Grouper Permit.
 - (4) — It is unlawful to possess more than one greater amberjack per person per day during the month of April.
 - (5) — It is unlawful to sell or purchase greater amberjack during any season closure for greater amberjack.
- (k) Red Snapper:
 - (1) — It is unlawful to possess red snapper less than 20 inches total length.
 - (2) — It is unlawful to possess more than two red snapper per person per day without a valid Federal Commercial Snapper Grouper permit.
- (l) Vermilion Snapper:
 - (1) — For recreational purposes:
 - (A) — It is unlawful to possess vermilion snapper (beeliner) less than 11 inches total length.
 - (B) — It is unlawful to possess more than 10 vermilion snapper per person per day.
 - (2) — It is unlawful to possess or sell vermilion snapper (beeliner) less than 12 inches total length with a valid Federal Commercial Snapper Grouper permit.
- (m) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.
- (n) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.
- (o) Red Porgy (*Pagrus pagrus*):
 - (1) — It is unlawful to possess red porgy less than 14 inches total length.
 - (2) — It is unlawful to possess more than one red porgy per person per day without a valid Federal Commercial Snapper Grouper permit.
 - (3) — It is unlawful to sell or offer for sale red porgy from January 1 through April 30.
 - (4) — It is unlawful to land more than 50 pounds of red porgy from May 1 through December 31 in a commercial fishing operation.
- (p) Combined Bag Limits:
 - (1) — It is unlawful to possess more than 10 vermilion snapper and 10 other snappers per person per day of which no more than two may be red snapper without a valid Federal Commercial Snapper Grouper permit.
 - (2) — It is unlawful to possess more than five grouper without a valid Federal Commercial Snapper Grouper permit of which:
 - (A) — no more than two may be gag or black grouper (individually or in combination) per person per day;
 - (B) — no more than one may be speckled hind or one warsaw grouper per vessel per trip.
 - (3) — It is unlawful to possess more than 20 fish in the aggregate per person per day of the following species without a valid Federal Commercial Snapper Grouper permit: whitebone

porgy, jolthead porgy, knobbed porgy, longspine porgy, sheepshead, gray triggerfish, queen triggerfish, yellow jack, crevalle jack, bar jack, almaço jack, lesser amberjack, banded rudderfish, white grunt, margates, spadefish, and hogfish.

(q) It is unlawful to possess any species of the Snapper-Grouper complex except snowy, warsaw, yellowedge, and misty groupers; blueline, golden and sand tilefishes; while having longline gear aboard a vessel.

(r) It is unlawful to possess Nassau grouper or jewfish.

(s) Fish Traps/Pots:

(1) It is unlawful to use or have on board a vessel fish traps for taking snappers and groupers except sea bass pots as allowed in Subparagraph (2) of this Paragraph.

(2) Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 646.2, openings and degradable fasteners specified in 50 CFR Part 646.22(e)(2)(i), and escape vents and degradable materials as specified in 50 CFR Part 622.40 (b)(3)(i) and rules published in 50 CFR pertaining to sea bass north of Cape Hatteras (35° 15' N Latitude). Copies of these rules are available via the Federal Register posted on the Internet at www.gpoaccess.gov/fr and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

(t) It is unlawful for persons in possession of a valid National Marine Fisheries Service Snapper-Grouper Permit for Charter Vessels to exceed the creel restrictions established in Paragraphs (b), (j), (o), and (p) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(u)(b) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper-Grouper complex.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. April 1, 1997; March 1, 1996; September 1, 1991;

Temporary Amendment Eff. December 23, 1996;

Amended Eff. August 1, 1998; April 1, 1997;

Temporary Amendment Eff. January 1, 2002; August 29, 2000; January 1, 2000; May 24, 1999;

Amended Eff. May 1, 2004; July 1, 2003; April 1, 2003; August 1, 2002.

15A NCAC 03M .0511 BLUEFISH is proposed for amendment as follows:

15A NCAC 03M .0511 BLUEFISH

(a) In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Bluefish developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions for bluefish:

(1) Taken by a commercial fishing operation:

(A) Specify size;

(B) Specify seasons;

(C) Specify areas;

(D) Specify quantity;

(E) Specify means/methods; and

(F) Require submission of statistical and biological data.

(2) Taken for recreational purposes:

(A) Specify size;

(B) Specify quantity.

(b) It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. March 1, 1994;

Amended Eff. March 1, 1996;
Temporary Amendment Eff. September 9, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;

15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS is proposed for amendment as follows:

15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS

In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management ~~Plans, Plans or to implement state management measures,~~ the Fisheries Director may, by proclamation, ~~suspend the minimum size and harvest limits established by the Marine Fisheries Commission, and implement different minimum size and harvest limits.~~ take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means and methods; and
- (6) Require submission of statistical and biological data.

Proclamations issued under this ~~Section~~ Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to ~~G.S. 113-221(e1).~~ G.S. 113-221.1.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-221.1; 143B-289.4;
Eff. March 1, 1996.

15A NCAC 03M .0513 RIVER HERRING AND SHAD is proposed for amendment as follows:

15A NCAC 03M .0513 RIVER HERRING AND SHAD

~~(a)~~ It is unlawful to possess river herring taken from coastal fishing waters unless the river herring season is open.

~~(b)~~ The take of river herring shall be set forth in the North Carolina River Herring Fishery Management Plan for implementation under Paragraph (c) of the Rule.

~~(c)~~ The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the commercial and recreational blueback herring, alewife, American shad and hickory shad fisheries:

- (1) Specify size;
- (2) Specify season;
- (3) Specify area;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

~~(d)~~ It is unlawful to take American shad and hickory shad by any method except hook and line from April 15 through December 31.

~~(e)~~ It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook and line or for recreational purposes.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. March 1, 1995;

Amended Eff. August 1, 1998;

Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999; March 1, 1999;

Amended Eff. April 1, 2001.

15A NCAC 03M .0514 SCUP is proposed for **REPEAL**

15A NCAC 03M .0514 SCUP

~~In order to comply with or utilize conservation equivalency to comply with the management requirements incorporated in the Fishery Management Plan for Scup developed cooperatively by the Mid Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions in the scup fishery:~~

- ~~(1) Specify size;~~
- ~~(2) Specify seasons;~~
- ~~(3) Specify areas;~~
- ~~(4) Specify quantity;~~
- ~~(5) Specify means/methods; and~~
- ~~(6) Require submission of statistical and biological data.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-221.1; 143B-289.4;

Eff. March 1, 1996.

15A NCAC 03M .0519 SHAD is proposed for **Adoption**

15A NCAC 03M .0519 SHAD

(a) It is unlawful to take American shad and hickory shad by any method except hook-and-line from April 15 through December 31.

(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

VII. ADVISORY COMMITTEE RECOMMENDATIONS AND PUBLIC COMMENT

Finfish AC, Met Washington 7 August 2007

Approve by consensus to take to regional review.

Southeast Regional AC, Met Wilmington 14 August 2007

Motion to accept the IJ FMP amendment and rule changes as presented and it was passed unanimously.

Central Regional AC, Met Washington 17 October 2007

Motion made by John Stone, seconded by Steve Dillon to take no action. Motion passed without debate, vote 3 to 1. (Note the late hour of the presentation).

Northeast Regional AC, Met Manteo 18 October 2007

Owen Maxwell made a motion to accept the IJ FMP amendment and rule changes as presented. Fred Waterfield seconded the motion and it was passed unanimously. Kelly Schoolcraft raised the issue of a 2.5 million pound reduction on king mackerel in the commercial fishery. If this had been in place would have resulted in early closure last year. Mr. Schoolcraft wants to see a state managed quota and not a regional quota. The king mackerel fishery is expanding to more northern states. Damon Tatem informed the AC that he agreed with what DMF was proposing relative to more involvement by the MFC and the public in the early process of federal management councils and Atlantic States Marine Fisheries FMP development. During the public comment period several individuals raised objections to the Director being granted broader proclamation authority.

Inland AC, Met Raleigh 23 October 2007

Jim Rice made a motion to accept the IJ FMP amendment and rule changes as presented. Hans Vogelsson seconded the motion and it was passed unanimously. Committee discussed whether the tuna rules would be a burden on Marine Patrol, and Marine Patrol staff member clarified he did not think so.

Reviewed by Joint Legislative Study Commission of Seafood and Aquaculture on November 29, 2008 with no revisions offered.

Proposed rules for the Marine Fisheries Commission (MFC) were published in Volume 22, Issue 20 of the *North Carolina Register* on April 15, 2008. There were four public hearings to collect comments about these proposed rules, as follows:

- Monday, May 12, 2008, 7:00 p.m., Roanoke Island Festival Park, One Festival Park, Manteo, NC 27954
- Tuesday, May 13, 2008, 7:00 p.m., Pitt Community College, Reddrick Building, Room 242, 1986 Pitt Tech Road, Winterville, NC 28590
- Wednesday, May 14, 2008, 7:00 p.m., DENR Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, NC 28405
- Monday, May 19, 2008, 7:00 p.m., Center for Marine Science and Technology, 303 College Circle, Room 306, Morehead City, NC 28557.

There was no public comment on the IJ FMP rules.

VIII. RECOMMENDATION

DMF recommends MFC adoption of the IJ FMP rules and Amendment 1 to the FMP.

Prepared by	Katy West
	12 July 2007
Modified	21 August 2007
Modified	10 June 2008

NOTICE OF TEXT ATTACHMENT

In order to effectively comply with mandated measures contained in federal Fishery Management Plans (FMPs) for species in the North Carolina Interjurisdictional FMP broad proclamation authority is granted in rule 15A NCAC 03M.0512 to the Division Director, along with a subsequent review by the Marine Fisheries Commission. Potentially conflicting proclamation authority is being removed from selected species rules.(Ocean striped bass, Spanish mackerel, king mackerel, weakfish, snapper-grouper complex including black sea bass, bluefish, and scup).